

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(1) That the Carrier violated and continued to violate the Rules of the Clerks' Agreement at Jacksonville, Florida, when on July 31, 1949, and subsequent thereto, as shown by "dates" on Exhibit A, until March 3, 1951, the Carrier permitted and required an employe not covered by said Agreement to perform work on such "dates" that was assigned to and performed by the A.A.R. Clerk, a position fully covered by the Clerks' Agreement, Monday through Friday.

(2) That A.A.R. Clerk J. D. Burfoot be compensated for the "dates" and "hours" shown on Exhibit A, at the time and one-half rate of his position, \$11.04 per day, as of July 31, 1949, plus subsequent general increases.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 31, 1949, the position of A.A.R. clerk, rate \$11.04 per day, was assigned to work six (6) days per week, eight (8) hours per day, 7:00 A. M. to 3:30 P. M. with 30 minutes for lunch. On Sundays, holidays and after regular working hours this position was worked on an overtime basis to perform the A.A.R. write-up work in connection with foreign car repairs. The assigned duties of the position were to make the original record of repairs to cars at the car, on billing repair cards and other related work in connection with car repairs and A.A.R. billing.

On September 1, 1949, the A.A.R. clerk's assignment was reduced to five days per week, Monday through Friday, with the same hours and duties as before.

On Sunday, July 31, and Sunday, August 7, 1949, the car repair forces were worked a part of the day making repairs to foreign cars, but Burfoot was not called to perform his work in connection with these repairs and he filed time tickets for two hours on July 31, and three hours on August 7.

When Burfoot received his next pay check, payment for these two tickets was not allowed and he could get no satisfaction from the Superintendent of the Car Department as to the reason for non-allowance. Burfoot turned this

OPINION OF BOARD: Prior to July 31, 1949, Claimant Burfoot held the position of A.A.R. Clerk at Jacksonville, Florida, and was assigned to work from 7:00 A.M. to 3:30 P.M. six days per week. Work performed by Claimant after hours and on Sundays and holidays was compensated for on an overtime basis.

The Carrier admits that on Sunday, July 31, and Sunday, August 7, 1949, the work previously performed by the Claimant was given to employees not covered by the applicable agreement. It appears that this practice continued until February 24, 1951, when the work in question was restored to the Claimant on a call basis. However, Carrier resists payment of that part of the claim which seeks compensation for alleged violations subsequent to August 7 on the grounds; (a) that the only claims properly asserted on the property were for July 31 and August 7; (b) that the claims for subsequent dates were not timely made in accordance with the requirements of the rules; and (c) that the Organization improperly attempted to enlarge the claim after the cause thereof had ceased to exist.

From the record, it appears that the claim was initiated by the filing of "time tickets" for the work of which the Claimant was deprived on July 31 and August 7, 1949. The claim was progressed on the property in due course to Carrier's Director of Personnel and the Organization's General Chairman who met in conference November 7 to 10, 1950. The Director of Personnel died on November 23, 1950, and the General Chairman on January 16, 1951. On February 19, 1951, the Carrier's Division Superintendent was instructed to compensate Claimant for the two time tickets submitted by him for July 31 and August 7, 1949, which settlement the Claimant refused to accept. Subsequently, on April 18, 1951, the Organization's successor General Chairman, acting on behalf of the Claimant, made a demand on the successor Director of Personnel for the adjustment of 127 alleged additional violations, aggregating 802 hours, occurring between August 7, 1949, and February 24, 1951.

The question before us is whether the Organization's demand for redress for the alleged violations that occurred between August 7, 1949, and the time when the work in question was restored to the Claimant is within the purview of the claim. At the time the claim arose the only rule fixing the time and manner of presenting such demands was Rule 36 and Addendum No. 15 thereto which provided, in substance, that claims should be initiated by the employee presenting same to his immediate superior within seven days of the cause for the complaint. No question is before us to the claim for compensation for July 31 and August 7, 1949, not having been presented in time. The question is whether that presentation was sufficient to carry with it the Organization's demands as to the subsequent violations. Nor do we find in the Rules any requirement that claims of the character here involved must be presented by so-called "time tickets", though it may be concluded that the timely filing of such "time tickets" with the employee's immediate superior covering the days that a violation was claimed would have been sufficient under the Rules as they then existed.

It would seem to us, therefore, that disposition of the case before us must turn upon an issue of fact as to whether the record shows that the Carrier was sufficiently advised that the Organization was demanding redress on behalf of the Claimant for alleged violations that occurred subsequent to August 7, 1949, at the time this claim was under consideration on the property. We think it does. Reference to letters addressed to Carrier officials by representatives of the Organization under dates of December 12, 1949, April 25, May 10, and October 4, 1950, and quoted in the record will disclose that in each instance it was asserted by the Organization that continuing claims were being pressed. There is controversy as to whether it was so understood by the Carrier's Director of Personnel at his conference of November 7 to 10, 1950, with the General Chairman, but we are obliged to resolve the issue on the basis of what he should have understood the claim to have been, in the light of the facts before him at the time, rather than from the view point of what he did understand it to be. The Carrier has cited previous awards to

the effect that this Board is without jurisdiction unless it appears that the dispute submitted to it was first asserted on the property, and that the scope of a claim may not be broadened during subsequent conferences. In our opinion, the instant case is distinguishable from those precedents on the facts.

There is in the record an exhibit supplied by the Organization and purporting to disclose various "dates" and "hours" when it asserts that the Claimant was deprived of work as a consequence of the Carrier's violation of the Agreement; but it does not appear that this statement has been verified by the Carrier. Under the circumstances, the claimant should be allowed for such times and periods of time as it can be established that the Carrier violated the Agreement as we have applied it. For such times and periods Claimant is entitled to be compensated for such violations at his time and one-half rate then in effect, plus such subsequent general increases, if any, as were applicable to the position.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 6th day of August, 1953.