

Award No. 6544

Docket No. CL-6471

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that

(a) Carrier violated the Agreement effective May 1, 1942, Memorandum of Agreement and Memorandum of Understanding effective May 26, 1945, on October 1, 1947, when it reduced the work week of Porters Brice Gilder and Jim Taylor from seven to six days per week and thereby blanked a position necessary to the continuous operation on the seventh day; and

(b) That Porters Gilder and Taylor be compensated at the rate of time and one half for each Sunday they were not allowed to work from October 1, 1947, to September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 1, 1947, Porters Brice Gilder and Jim Taylor were regularly assigned to work seven days per week at Augusta, Georgia. They received time and one-half for the work performed on the seventh day, at their regular straight time rate of pay under revised Rule 38, effective May 26, 1945.

On or about October 1, 1947, the Claimants were notified that their assignments were being reduced from seven days to six days per week, with Sundays as rest days, starting with Sunday, October 5, 1947. No relief was furnished by the Carrier on their rest days, their positions being blanked on Sundays.

Rule 1 of the Agreement, effective May 1, 1942, places porters under Class 2, employees. Memorandum of Understanding of May 26, 1945, provides that station porters (serving stations or offices where Class 1, Group 1 employees are engaged in continuous operation) would be considered in the category of those "employees necessary to the continuous operation of the Carrier." Claimants, being porters, automatically came under this category and their positions, which were necessary to the continuous operation of the Carrier, should have been filled seven days per week. They were assigned to station porters' positions in the Campbell Street Yard Office at Augusta, Georgia, where employees in Class 1, Group 1 were engaged in performing services that were necessary to the continuous operation of the Carrier (see Section 1, page 4, Employees' Exhibit "A").

All data contained herein has been furnished Claimants.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends that claimants were not porters and hence not subject to the Memorandum of Understanding effective May 26, 1945. The Organization avers that such contention was not made in the handling of the dispute on the property. The Carrier never answered any letter of the Organization with reference to this claim so we cannot be certain of Carrier's position in handling the matter on the property. In view thereof and since the Carrier's statement of facts it appears that the claimants performed janitor service at Campbell Street and Harrison Yard offices, among other things, we feel bound to find that they were subject to such Memorandum of Understanding.

The Organization contends that the claim should be allowed at time and one-half rate citing one of our well established principles as stated in Award No. 6144, to-wit:

"The penalty rate for work lost because it was given to one not entitled to it under the Agreement is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work."

However, this is not a case of "work lost because it was given to one not entitled to it under the Agreement" but is a case of penalty pay for work not performed which we have consistently held should be at pro-rata.

(Page references relate to original document.)

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

The agreement was violated.

AWARD

Claim sustained at pro-rata rate only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.