

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, 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) The Carrier violated the Agreement when, at Camak, Georgia, it abolished the position of Bill and Utility Clerk and re-instated the positions of First and Second Trick Bill Clerks without complying with Agreement Rules, and

(b) Claimant Mr. Z. B. Wilson shall now be compensated at proper rate of time and one half for all work performed from 8:00 A. M. to 11:00 A. M. from June 7, 1954, through September 15, 1954.

(c) Claimant Mr. W. O. Thompson shall now be compensated at pro-rata rate from June 7, 1954, through September 15, 1954.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 22, 1954, there were two positions titled "Bill Clerks" at Camak, Georgia. These two positions were occupied by Claimant Mr. Z. B. Wilson and Mrs. Irene F. Moore. On March 16, 1954, the Carrier issued Bulletin No. 1-54 abolishing the two bill clerk positions effective March 22, 1954, and advertising a new position titled "Bill and Utility Clerk" hours of assignment 11:00 A. M. to 7:00 P. M. (Employees' Exhibit "A".)

The position of "Bill and Utility Clerk" was duly assigned to Claimant Mr. Z. B. Wilson, effective March 22, 1954. (Employees' Exhibits "B" and "C".)

Effective June 7, 1954, **without bulletins**, the former two "Bill Clerk" positions were re-established and the "Bill and Utility Clerk" position abolished. Claimant Wilson and Mrs. Irene F. Moore were, as of June 7, 1954, assigned to the two re-established positions without bidding thereon or being assigned by bulletins.

on June 7, 1954 and the two jobs of Bill Clerk were reinstated on that date, no bulletins were issued. In fact, bulletin was not issued until September 15, 1954 and then when an agreement was reached to bulletin the job concurrently with withdrawal of claims. Conceding there was a technical violation no one lost anything by the transaction—Claimant Wilson was working from 11:00 A. M. to 7:00 P. M. His hours were changed on June 7, 1954 to work 8:00 A. M. to 4:00 P. M. There is no rhyme or reason for claiming time and one-half from 8:00 A. M. to 11:00 A. M. from that date to September 15, 1954. Insofar as claimant Thompson is concerned, carrier does not know yet how he comes in the picture. Thompson was cut off in January 1954. On January 14, 1954, he wrote following letter to Yardmaster Harrison, Augusta:

“Account reduction in forces this is to advise that I wish to furlough in accordance with Rule 14 of current agreement between the parties.

I wish to waive my rights to be called for vacancies of less than thirty (30) days duration unless otherwise advised. My address is 1604 Wrightsboro Road, Augusta.”

Thompson had not only furloughed himself, he had barred himself for short vacancies of less than thirty days duration. There was no vacancy at Camak for Thompson to fill.

It is our position that while there was a technical violation of the agreement, no one lost anything by the transaction—further that there was an agreement to drop the claims if a bulletin was issued, the Petitioners not carrying out their part of the bargain.

There is no merit to this claim and we request it be denied.

All data contained herein has been made available to Petitioners.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 7, 1954, the Carrier reinstated two positions at Camak, Georgia, that had been abolished on March 22, 1954. The restored positions were thereupon filled with the same two employes, including Claimant Wilson, who occupied them at the time they were abolished. Upon the same date, the position these two employes had occupied from March 22 to June 7, 1954, was abolished. The Carrier neglected to bulletin any of these changes of June 7, 1954, until September 15, 1954, more than three months after they were effected.

That this factual situation constitutes a rather flagrant violation of Rules 6 and 14 (a), the bulletin requirements of the controlling Agreement, is quite apparent. It was plainly Carrier's obligation to bulletin the June 7, 1954 changes before they were accomplished. We are not impressed by the Carrier's contention that the Petitioner's Division Chairman had agreed to drop the instant claims when the bulletin of September 15, 1954 was issued; the Division Chairman denies any such agreement and the only evidence offered in support of the contention is self-serving and not persuasive, being the Carrier's own inter-office communications.

The Carrier also claims that it was required by Rule 15 of the Agreement to restore the two most recent incumbents to the reinstated positions, since

they were reestablished within ninety days of their abolition. However, Rule 15 makes clear that this obligation comes into existence only if the former incumbents have applied for the restored positions. In the present case, the employes concerned did not have an opportunity so to apply since the reinstatement of the positions was not bulletined.

From March 22 to June 7, 1954, Claimant Wilson was employed in a position which called for a working period of from 11:00 A. M. to 7:00 P. M. He should have been continued in that position and at those hours until at least September 15, 1954, since the changes affecting him on June 7, 1954 were unbulletined until September 15, 1954. In violation of the Agreement, therefore, he was required to work from 8:00 A. M. to 11:00 A. M. during the June 7 to September 15, 1954 period and his claim is based on that factor and appears to be little more than an approximation of the contract measure of damages. In short, he was compelled to suspend work between 4:00 to 7:00 P. M. to absorb what should be overtime that would otherwise have been received for work performed between 8:00 and 11:00 A. M.

Claimant Wilson's claim does not seem unreasonable and under the circumstances, we will sustain Claims (a) and (b). See Awards 7352, 6308, among others, as well as Rules 18 (a) and 38 (a) and (k) of the Agreement. Claim (c) will be denied since it appears to have no logical basis, and Claimant Thompson was off on furlough during the entire period in question.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was violated as indicated in the Opinion.

AWARD

Claims (a) and (b) sustained. Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.