

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

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

(1) The Carrier violated the provisions of Rules 11 (a) and 47, of the January 1, 1938 Agreement, and letter of understanding dated September 3, 1942, hereinafter quoted, when it failed to re-bulletin vacancy in Yard Clerk Position No. 3070, at Bowden Yard, on March 3, 1956, and that as a result of this violation

(2) Clerk P. J. Allen, Jr., shall be compensated at the punitive rate of pay of yard clerk for each Thursday and Friday, March 22, 23, 29 and 30, 1956, and shall be compensated at the pro rata rate of yard clerk for each Saturday and Sunday, March 17, 18, 24, 25, 31 and April 1, 1956, account of not being returned to his regular assignment in Position No. 32 on March 11, 1956.

EMPLOYES' STATEMENT OF FACTS: This claim arose out of the same circumstances as the claim in behalf of Clerk J. A. Flink while filling Position No. 2243 at Bowden during the period involved, which claim has been submitted to the Third Division in another submission.

When Clerk J. A. Flink was assigned to the thirty-day vacancy in Position No. 2243 on January 19, 1956, Flink's vacancy in Yard Clerk Position No. 3070 was bulletined for a probable duration of thirty days, and Clerk P. J. Allen, Jr., was awarded this vacancy on January 30, 1956. The period stipulated in letter of understanding expired on March 3, 1956 and the position should have again been readvertised, releasing Clerk Allen upon expiration of the time for receipt of bids. Failure to comply with the rules of the agreement and letter understanding, hereinafter quoted, resulted in Clerk Allen being forced to remain on Position No. 3070 until April 6, 1956, and requiring him to suspend work on his assignment in Position No. 32 on Saturday and Sunday, March 17, 18, 24, 25, 31 and April 1, 1956, and re-

him to take it in the first place. It is uncontradictable, therefore, that he was not damaged or adversely affected in the slightest by the situation, a fact emphasized by the circumstances that Mr. Allen, despite his avowals about being kept on Position No. 3070 against his will and claim for compensation on the premise that he was deprived of work on his own assignment (Yard Clerk Position No. 32), did not even return to Position No. 32 when the vacancy in Position No. 3070 terminated but, instead, displaced a junior employe from Position No. 2946, Yard Clerk, which position was advertised on a permanent basis during his incumbency of Position No. 3070 (Item No. 6, Carrier's Statement of Facts). It is not presumptuous to infer from his action that if his desire to return to Position No. 32 were sincere he would have done so following his release from the temporary vacancy, and that if he found Position No. 3070 to be so undesirable he would have applied for the vacancy in Position No. 2946 when it was advertised on January 26 and not waited until April 5 to take it in the exercise of displacement rights.

3. If, however, the claim otherwise had merit (and it does not), it would be valid for only a day's pay at pro rata rate for March 17, 18, 24, 25, 31 and April 1 under the principle thoroughly established in awards of the Third Division as fully explained in Award 7370, in which it was stated in the Opinion of Board:

"The question as to the nature of the penalty for the violations has been raised. The Board has frequently decided that penalties cannot be pyramided. Where two or more violations carrying different penalties are established, the higher of such penalties is the one to be imposed. Awards 5423, 5549, 5638, 6750. Under the foregoing, Claimants are entitled to a day's pay on a pro rata basis for each day they were improperly held out of service, it being a higher penalty than time and one-half for rest day work."

For the reasons stated the claim is without merit and should be denied.

The Florida East Coast Railway Company reserves the right to answer any further or other matters advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, in connection with all issues in this case, whether oral or written, if and when it is furnished with the petition filed ex parte by the Brotherhood in this case, which it has not been. All of the matters cited and relied upon by the Railway have been discussed with the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The record does not sustain the violations alleged in the Statement of Claim. Consequently, the claim will be denied.

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 Employe involved in this dispute are respectively Carrier and Employe 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1960.