

Award No. 9621

Docket No. CL-9449

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 understanding dated September 3, 1942, hereinafter quoted, when it failed to re-bulletin vacancy in Bill Clerk Position No. 2243, at Bowden Yard, on February 24, 1956, and that as a result of this violation

(2) Clerk J. A. Flink shall be compensated at the pro rata rate of yard clerk for each Thursday and Friday, March 8, 9, 15, 16, 22, 23, 29 and 30, 1956, and shall be compensated at the punitive rate for each Saturday and Sunday, March 10, 11, 17, 18, 24, 25, 31 and April 1, 1956, account of failure to bulletin Bill Clerk Position No. 2243 in order that claimant could return to his assignment on Yard Clerk Position No. 3070 on March 6, 1956.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 19, 1956, the claimant was assigned to Yard Clerk Position No. 3070, at Bowden Yard, with Saturday and Sunday as rest days. Because of absence of incumbent of Bill Clerk Position No. 2243, due to illness, vacancy in that position was bulletined on January 10, 1956 with a stated probable duration of thirty days. The rest days on Position No. 2243 are Thursday and Friday. Instead of re-bulletining this position, in accordance with provisions of Rule 11 (a), modified by September 3, 1942 letter understanding, on February 25, 1956 in order that Clerk J. A. Flink could return to his assignment in Yard Clerk Position No. 3070, the Carrier failed to re-bulletin the vacancy until March 26, 1956, thereby forcing the claimant to remain on Position No. 2243 until April 5, and as a result he was required to suspend work on his assignment in Position No. 3070 on Thursday and Friday, March 8, 9, 15, 16, 22, 23, 29 and 30, and was required to work Position No. 2243 on the rest day of his

"D"—letter from the General Superintendent to the General Chairman, dated September 3, 1942). Clerk Flink certainly was not such an employee. As was proper under the rules of the agreement, he filled the vacancy in Position No. 2243 beyond its initially estimated duration, it is true, but while doing so continued to enjoy the benefits which induced him to take it in the first place. It is uncontradictable, therefore, that he was not damaged in the slightest by the situation.

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 of Position No. 3070 for March 8, 9, 15, 16, 22, 23, 29 and 30 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."

Furthermore, under no consideration would any claim in behalf of Clerk Flink for March 17 and 18, 1956, be valid as on those dates he was absent from work and unavailable on account of personal illness.

For the reasons stated the claim is without merit in its entirety 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 Employees, 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 seen. All of the matters cited and relied upon by the Railway have been discussed with the Employees.

(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 Employee involved in this dispute are respectively Carrier and Employee 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.