

Award No. 10731

Docket No. CL-10010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the agreement between the Carrier and the Brotherhood effective August 15, 1939, reprinted May 1, 1955, when on January 14, 1956, it advertised position titled Old Yard Checker, Oelwein, Iowa, with assigned hours of 10:30 A.M. to 6:30 P.M.;

(2) That the Carrier shall now be required to compensate the successful applicant, O. E. Sager and/or his successor at the pro rata rate from 8:00 A.M. to 10:30 A.M. and additional half time from 4:00 P.M. to 6:30 P.M. (equivalent to two and one-half (2½) hours at the rate of time and one-half), rate of \$15.02 per day, for Monday, January 16, 1956, and similar payment for each subsequent day, Sunday through Thursday, on which he worked this position with a starting time of 10:30 A.M.;

(3) That the Carrier shall now be required to compensate the incumbent of the Relief Clerk position, B. T. Lonie and/or his successor, for 8:00 A.M. to 10:30 A.M. at the pro rata rate of the position, and additional half time from 4:00 P.M. to 6:30 P.M. (which is equivalent to two and one-half (2½) hours at the rate of time and one-half, daily rate \$15.02, for Friday and Saturday, January 20 and 21, 1956, and similar payment for each subsequent Friday and Saturday on which he was required to perform service on this position with a starting time of 10:30 A.M.; and

(4) That the Carrier shall now be required to bulletin this position of Old Yard Checker, Oelwein, Iowa, in compliance with the provisions of the effective agreement compensating Claimants until such correction is made.

EMPLOYES' STATEMENT OF FACTS: Under date of January 14, 1956, Carrier issued Circular No. 7 advertising the position of Old Yard Checker,

and the same data and material arguments are presented as were presented in the previous case, the Award in the previous case should be followed * * *. For in such a situation there is nothing new which has not been passed upon and taken into account before, and the only question is whether the personal judgment of the latter referee * * * should be substituted for that of the former referee.'

"A contrary course would tend to discourage settlements between the parties and discourage prompt compliance with Awards rendered."

Claim covered by this docket involves the same controlling facts and the same rules as involved in previous Award 1471, the Employees rely upon the same material arguments; hence, Carrier avers that the Third Division must reaffirm its decision in Award 1471 and render a denial award in the instant case.

Carrier affirms all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

OPINION OF BOARD: The same controlling facts, the same rule (the designation, however, having been changed from Rule 39 to Rule 33) and parties were before this Board in Award 1471, wherein the Employees' claim was denied. This award places the proper interpretation upon Rule 33(a) under the circumstances presented and must be followed. See Award 6710.

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 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 3rd day of August 1962.