

Award No. 10810
Docket No. CL-10573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, at Atlanta, Georgia, in the office of Agent, on May 2 and 3, 1957, it improperly compensated Clerk P. H. Browning for work performed and failed to afford Clerk C. V. Goolsby preference for work he was entitled to perform, and

(b) Claimant P. H. Browning shall now be additionally paid the difference between what he was paid and what he should have been paid, namely, eight hours at pro rata rate attached to his regular position of Utility Clerk and eight hours overtime at rate attached to the position of Waybill Record Clerk, for filling two positions each day; and Claimant C. V. Goolsby, shall be additionally compensated at rate of time and one-half the rate of \$16.96 per day of the position of Waybill Record Clerk on each of the two days he was not allowed to work.

EMPLOYES' STATEMENT OF FACTS: 1. On Thursday, May 2, and Friday, May 3, 1957, J. C. Donald, regularly assigned occupant of position of Waybill Record Clerk was on vacation. The assigned hours of the position are 2:00 P. M. to 10:30 P. M., thirty minute meal period.

2. Claimant P. H. Browning was regularly assigned to position of Utility Clerk. (An improper title, but a question not involved in this dispute). Claimant Browning's assigned hours were 8:00 A. M. to 5:00 P. M., one hour meal period.

3. Claimant C. V. Goolsby was regularly assigned to the position of Relief Clerk, which relieves Donald's position of Waybill Record Clerk on Tuesdays and Wednesdays. Claimant Goolsby's rest days are Thursday and Friday.

4. On the two days of Clerk Donald's vacation, Thursday, May 2, and

OPINION OF BOARD: This is a dispute between the Grand Lodge Brotherhood of Railway and Steamship Clerks and The Southern Railway Company.

On Thursday, May 2, and Friday, May 3, 1957, J. C. Donald, regularly assigned occupant of position of Waybill Record Clerk was on vacation. His assigned hours were 2:00 P. M. to 10:30 P. M. with a thirty minute meal period. Claimant (Browning) was regularly assigned to position of Utility Clerk. His hours were 8:00 A. M. to 5:00 P. M. with a one hour lunch period. Claimant Goolsby was regularly assigned to the position of Relief Clerk.

On the two days in question Claimant Browning was assigned to the position held by Donald. In addition he was ordered to report to work his former position from 8:00 A. M. to 2:00 P. M.

For this service Browning was paid eight hours at the pro rata rate of Donald's position plus five hours at time and one-half the rate of the position of Utility Clerk. Claimant Browning contends that he was filling both positions and that he should be paid eight hours pro rata rate of Waybill Record Clerk's position plus eight hours at time and one-half of the Utility Clerk's position.

Claimant Goolsby contends that he was entitled to fill the position vacated by Browning because Browning was not available (because he could not work the full eight hours).

Carrier contends that it was giving Claimant Browning an overtime call. It further contends that Claimant Goolsby was not entitled to the call.

Let us first apply ourselves to the Browning claim. Claimant Browning worked five hours of an eight hour position. Since Claimant worked more than half of the work day, we are of the opinion that he is filling that position and entitled to be paid for eight hours. This award can be distinguished from Award 10351 for in that case worked less than a majority of the time of the position.

"Rule 27(d)—When regularly assigned employees are required to work more than one shift in continuous service on two different positions, they will be paid time and one-half for service performed on the second position at the rate of pay applicable to such second position except that, if the second position is on their own seniority district, and they are required by the carrier to double, they will be paid time and one-half at their own rate if higher than the rate of the second position."

This necessarily disposes of the claim of Goolsby. Certainly, the Carrier had the right to use Browning. Claimant Goolsby was not entitled to fill the position.

For the foregoing reasons, we believe there was a violation of the Agreement.

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 has been violated.

AWARD

Claim sustained as to Claimant Browning. Claim denied as to Claimant Goolsby.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1962.