

Award No. 11233
Docket No. CL-10848

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

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

ATLANTA AND WEST POINT RAILROAD

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

(a) The Carrier violated the Agreement when at East Point, Georgia on January 25, 30 and 31 and February 3, 4, 5, 6 and 7, 1958 it employed transient or "curbstone" labor to perform work covered by the Clerk's Agreement instead of proffering such work to employees covered by the Clerks' Agreement.

(b) As a penalty, Claimant J. H. Webb shall now be additionally paid at the pro rata rate of \$16.86 per day for all days enumerated in Part (a) hereof.

EMPLOYEES' STATEMENT OF FACTS: (1) Claimant J. H. Webb was the regularly assigned occupant of the position of Clerk at Carrier's East Point, Georgia station. Claimant Webb's position was claimed to be abolished as of the close of business, January 20, 1958. Claimant Webb thereupon exercised seniority to a position at Oakland City, Georgia, some three miles distant from East Point, Georgia.

2. After Claimant Webb's position was claimed to be "abolished" the Carrier on the dates specified in Part (a) of the Statement of Claim, "picked up" transient, "curbstone" or unattached persons having no previous or subsequent employee status with the Carrier and paid such persons an unspecified and unknown sum to perform the duties attaching to Claimant Webb's allegedly "abolished" position.

3. Claim was duly filed under date of January 30, 1958, February 1, 1958 and February 8, 1958. Claims being declined, were appealed up to Carrier's highest officer designated to receive and consider such appeals. Claim being declined by the Carrier is now properly before your Division for adjudication. Copies of all correspondence with in connection with the claims are attached hereto and identified as Employees' Exhibits "A" through "G".

For reasons given, Carrier respectfully requests this claim be denied.

All data contained herein has been made available to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant on January 15, 1958 wrote a letter to the Carrier, the relevant portions are as follows:

"In accordance with existing rules and regulations, and due to abolishment of my position at the East Point agency (Bulletin No. 1-58), I wish to exercise my seniority over position of clerk, now being filled by E. C. DuBose, to become effective as of January 21, 1958.

"I also wish to commence my vacation as of January 21, and running thru February 10, 1958."

On January 17, 1958, the Claimant requested a six months leave, it was granted in a letter from the General Superintendent which said as follows:

"In accordance with your request dated January 15, 1958, you are hereby granted leave of absence of six months from January 21, 1958, from your employment as clerk, Oakland City, Georgia, Seniority District No. 10.

"As provided by Rule 31(b), permission is granted you for engagement in other employment during this leave.

"This leave is granted with the district understanding that you are subject to recall to active duty not later than July 21, 1958, or secure renewal of your leave prior to that date.

"This leave and the conditions specified herein are in accordance with Agreement between the Management and the Clerical Organization."

This claim during its progress on the property was based upon alleged violations of Rules 1, 4, and 40.

Before this Board, for the first time, Rules 3, 5, 15, and 20, are being urged as having been violated. The Carrier before this Board objects to a consideration of these rules because no specific alleged violation was made in support of the claim. We sustain the objection.

We can find nothing in the rules before us which supports the Claimants position, the burden is upon the Claimant to prove his claim. By his conduct, he placed himself within the provisions of Rule 31(b), and this considered him out of service, thus he was not available for work in the event he had a valid claim.

Rule 31(b) is as follows:

"An employe absent on leave who engages in other employment will be considered out of the service, unless special arrangements shall have been made with the official granting the leave of absence and copies furnished representative of the employes."

He was an Employe of Oakland City, and not an Employe of East Point.

We find no 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

We find no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.

**LABOR MEMBER'S DISSENT TO AWARD 11233
(DOCKET CL-10848)**

The Referee is palpably wrong in his decision for the following reasons, among many others:

The "Opinion" of the Referee reads in part:

"This claim during its progress on the property was based upon alleged violations of Rules 1, 4, and 40.

"Before this Board, for the first time, Rules 3, 5, 15 and 20, are being urged as having been violated. The Carrier before this Board objects to a consideration of these rules because no specific alleged violation was made in support of the claim. We sustain the objection."

FIRST:

The "Statement of Claim" of the Employees' Ex Parte Submission reads in part: "Claim of the System Committee of the Brotherhood that: (a) The Carrier violated the Agreement when at East Point, Georgia * * *." (Emphasis ours.)

SECOND:

On Page 2 of the Employees' Ex Parte Submission, under the "Position of Employees", it is stated in part: "A copy of the effective Agreement is on file with your Division, and by reference made a part of this submission. Certain Rules, or portions thereof, will be quoted for ready reference and in support of Claimant's position * * *." (Emphasis ours.)

It is obvious, therefore, that the entire Rules Agreement between the parties to this dispute was made a part of the official record. This fact was called to the Referee's attention and an appeal was made that he re-examine his notes in light of his obvious error in holding that specific rules were before this Board for the first time, as urged by the Carrier Member.

He adamantly declined to recognize his gross mistake, content to become a party to the Carrier Member's absurd contentions.

I dissent to the outrageous decision.

/s/ C. E. Kief

C. E. Kief, Labor Member
March 18, 1963