

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Lee R. West, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
FLORIDA EAST COAST RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it permitted Painter J. L. Norwood to displace Bridgetender T. A. Marston effective as of July 1, 1960.

(2) Bridgetender T. A. Marston be paid for time lost and be reimbursed for expense incurred as a result of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** Mr. T. A. Marston was regularly assigned to the position of Drawbridge Tender at the Miami River Drawbridge which had rest days of Tuesdays and Wednesdays, with hours from 9:00 A.M. to 5:00 P.M.

Effective July 1, 1960, the Carrier permitted Painter M. W. Norwood to displace Bridgetender T. A. Marston, which was in violation of Agreement rules. In order to protect his interests, the claimant then displaced Drawbridgetender O. H. Edge at the Stuart Drawbridge, which also had rest days of Tuesdays and Wednesdays, with hours from 2:00 P.M. to 10:00 P.M. The Claimant was required to qualify as a drawbridgetender at the Stuart Drawbridge on his own time.

Mr. Marston started working at the Stuart Drawbridge on July 7, and he worked that position on July 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1960. Upon arrival at Stuart shortly before 2:00 P.M., on July 21, 1960, the Claimant was given a letter instructing him to report for duty at Miami, July 21, 1960 at 9:00 A.M. The Assistant Supervisor then called him by telephone and instructed the claimant to return to Miami on Train No. 5 (which was due at Stuart at 2:31 P.M.) and to report back to his rightful former position at the Miami drawbridge on July 22, 1960.

While employed at Stuart, the claimant incurred meal and lodging expense amounting to fifty dollars (\$50.00), or ten (10) days at five (5) dollars

" . . . As to the claim in behalf of Burton for expenses incurred incident to his moving, we find no provision for its allowance in the Agreement. . . ."

Again, the Third Division denied that portion of the claim for personal expenses in the dispute resolved by Award 7367 as follows:

"Claim 3 is denied, as we find no rule of the Agreement which would permit such payment of expenses."

The claim for all expenses incurred was denied by the Third Division in Award 6024, on the finding that making the claimants whole for compensation lost was adequate restitution, or, as stated by the Board:

" . . . violation of the rules of the Agreement compels the assessment of a proper penalty. That in our opinion, under the confronting facts and circumstances, will be accomplished by requiring the Carrier to pay the four employees specifically named in the claim what they would have received if their positions had not been abolished for the period of time in question. . . ."

Discounting the three (3) days (July 2, 3 and 4, 1960) which, as developed above, the claimant did not work of his own volition by not asserting his displacement rights, he was made whole or paid what he would have earned if he had not been displaced from the Miami River Bridgetender assignment by Mr. J. L. Norwood, since he was allowed pay for one day not worked to move to the Stuart assignment (July 1) and one day returning to the Miami River Drawbridge assignment (July 21).

As has been conclusively developed herein, the claimant lost July 2, 3 and 4, 1960, by election to wait until the seventh (7th) day of the 10-day displacement period accorded him by the schedule agreement before exercising his seniority and, obviously, the Railway owes him nothing for those dates. However, giving the claimant the benefit of the doubt, the Railway compensated him for two dates of claim, July 1 and 21, on the theory that it was necessary for him to lose those two days in moving from one assignment to another. Nothing more is due him. What is more, since there is no rule which will support that part of the instant claim for personal expenses, that, too, is totally devoid of merit and consequently, all parts of the claim presently before the Third Division must be denied.

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

**OPINION OF BOARD:** On July 1, 1960, Claimant was displaced as a Drawbridge Tender at the Miami River Drawbridge by M. W. Norwood. On July 7, Claimant displaced the Drawbridge Tender at the Stuart Drawbridge, and worked there until July 21, 1960, when he was instructed to return to his old position. He reported for work at his old position on July 22, 1960.

The Carrier concedes that it has wrongfully displaced Claimant with Norwood and paid Claimant for the time lost on July 1 and 21.

Claimant files this claim for time lost on July 2, 3 and 4 and for an additional \$50 for meals and lodging expenses which were incurred while he was away from his home and working at Stuart. In addition, he asks that he be reimbursed for transportation expense to and from Stuart in the amount of \$3.50.

Carrier's denial of the claim appears to be based upon the fact that Claimant could have displaced immediately and that any delay was of his own volition. It further contends that Claimant could have displaced closer to home and that no rule required the reimbursement of expenses.

The conclusion is inescapable that but for the wrongful displacement of Claimant by Carrier the days lost would not have occurred. Claimant exercised his right to displace well before the time allowed for him to do so had expired. We are of the opinion that he should not be required to displace on the same day he is wrongfully displaced in order to avoid loss. The loss of time was the direct result of the wrongful displacement and the loss should not fall upon Claimant who was displaced, but upon the Carrier, who wrongfully displaced him. There is no evidence that Claimant intentionally or negligently failed to mitigate damages here. In the absence of such evidence, he should be adequately compensated for all damages directly flowing from the wrongful displacement. This would not only include loss of time, but also his travel and lodging expenses while absent from his home as a result of the wrongful displacement.

For these reasons, the claim should be sustained.

**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.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1964.