

Award No. 14737
Docket No. CL-14717

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5500) that:

(1) The Carrier violated and continues to violate the rules of the Clerks' Agreement of December 1, 1956, as amended, when, on March 13, 1963, it required Yard Clerks L. C. Gooding, J. W. Bettencourt and T. E. Rhodes — account personal illness of Yard Clerk C. A. Ward — to desert their regular assignments on that date and work hours of assignment different therefrom and that, therefore,

(2) Yard Clerk L. C. Gooding shall now be paid eight (8) hours' pro-rata time at the regular rate of his position at that time, i. e., \$500.10 per month, in addition to what he was paid on that date, and that,

(3) Yard Clerk J. W. Bettencourt shall now be paid eight (8) hours' at pro rata time and the regular rate of his position at that time, i. e., \$480.51 per month, in addition to what he was paid on that date, and that,

(4) Yard Clerk T. E. Rhodes shall now be paid eight (8) hours' pro-rata time at the regular rate of his position at that time, i. e., \$500.10 per month in addition to what he was paid on that date.

EMPLOYEES' STATEMENT OF FACTS: March 16, 1963, then Local Chairman J. R. Gooding, Savannah, Georgia Yard Office, filed claims for and in behalf of the above named Yard Clerks, i. e., Clerks L. C. Gooding, J. W. Bettencourt and T. E. Rhodes, when, on March 13, 1963, Yard Clerk C. A. Ward, with assigned hours of service from 3:00 P. M., to 11:00 P. M., became ill and was unable to work, and these Clerks, i. e., Gooding, Bettencourt

moving. Clerk Gooding worked a few minutes actual overtime, but made no claim for the few minutes worked, which is customary. Mr. Gooding left the yard office for home at 4:35 P. M., March 13. The record shows that Clerk J. W. Bettencourt was assigned to work from 4 P. M. to 11:59 P. M. on March 13, 1963, and according to the records he was sent to the Drill Yard at 4:20 P. M., March 13, to carry on Clerk Ward's work. Clerk Bettencourt worked only from 4 P. M. to 11:59 P. M. on March 13, 1963, or a total of 8 hours. The claims of Clerks Gooding and Bettencourt are baseless.

Clerk T. E. Rhodes had no assignment on March 13, 1963 — he was off on one of his two rest days. Clerk Rhodes was **not** entitled to work on his assigned rest day.

The entire claim is without any semblance of merit.

It is a fact that what the Brotherhood is demanding for your Board to do is to require the Carrier to grant three (3) additional days' pay, 24 hours, in addition to the one (1) days' pay, 8 hours, Carrier already paid out as sick leave to Clerk Ward, making the total cost 32 hours straight time pay for having not more than 8 hours work performed on March 13, 1963, at Savannah Yard. **Of course the claim handled on the property demanded a total of 36 straight time hours as the penalty to be paid the claimants, in addition to the 8 hours paid Clerk Ward who was sick. That would make a total of 44 straight time hours Carrier would have to pay, according to the Brotherhood's demands on the property.**

It is a fact that the job or assignment was there to be filled by the regular incumbent, Clerk C. A. Ward. It was unfortunate that Clerk Ward was off sick, but that most certainly was not the fault of the Carrier. Clerk Ward was paid his regular pay for the 8 hours on March 13 under the Sick Leave Rule, Rule 46, of the agreement. Carrier did not require any of the remaining clerks in Savannah Yard to work any overtime; therefore, no overtime was absorbed. No one was required to work on their rest day or on a holiday, therefore no rule was violated, as alleged by the Brotherhood. All the Carrier tried to do was to keep the work going with the remaining force, which was sufficient that day, while Clerk Ward was off sick and under pay. The claim lacks merit.

It is a fact that when Rule 46 was negotiated granting sick leave pay to the clerical employes, paragraph (c) was placed in the rule for the very purpose of blanking as many jobs as possible and/or assigning the work to the remaining employes in the department in order to lower the tremendous financial cost to the company by the amount it could blank some of the jobs. The only exceptions are that no overtime, rest day or holiday work will be required of the remaining employes. The claims are baseless.

There is an agreement in effect between the parties, effective December 1, 1956, as amended. The baseless claim filed and handled on the property is **not** substantiated by any rule, interpretation, or historical practice, therefore, it was denied in its entirety by each and every officer of the Carrier. The claim filed and handled on the property has never been appealed to your Board. The claim which the Brotherhood is here attempting to assert, was never filed or handled on the property.

OPINION OF BOARD: On March 13, 1963, there occurred a temporary vacancy in the second shift (3:00 P. M. to 11:00 P. M.) Yard Clerk position

due to illness of the regularly assigned employee. Claimant Yard Clerk Gooding, working the first shift (8:00 A. M. to 4:00 P. M.) and Claimant Yard Clerk Bettencourt, working the second shift (4:00 P. M. to 11:59 P. M.) were assigned to perform the duties of said sick yard clerk.

The Organization claims that Claimants Gooding and Bettencourt's assignments were improper and a violation of Rule 37, and that the work of the vacant position should have been performed by Claimant Rhodes, senior available employee, who was on his rest day; and that Claimants Gooding and Bettencourt are entitled to 8 hours pro rata time at the regular rate of their positions.

The Carrier's position is that Rule 46, Sick Leave, and in particular 46(c) permits the duties of the sick employee to be assigned to the remaining employees in the department, namely in this instance, Gooding and Bettencourt.

Rule 46(c) states:

"In the application of this rule it is understood that where there is no necessity for a position to be kept up daily it may be blanked or the duties assigned to the remaining employees in the department. No overtime, rest day or holiday work will be required of the remaining employees by reason of the granting of the sick leave."

The Organization contends that Rule 46(c) is not applicable because the record shows that it was necessary for the position to be kept up daily due to Claimants Gooding and Bettencourt being required to fulfill the duties of the sick employee.

A close analysis of Rule 46(c) shows that the Carrier may blank the position if there is not a necessity for the position to be kept up daily. This does not mean, as the Organization would have us believe, that the Carrier is prohibited from assigning the duties of a sick employee to the remaining employees in the department unless it proves that there was no necessity for the position to be kept up daily. This is required only when a position is to be blanked. The Carrier therefore was authorized, by virtue of said Rule 46(c), to assign the duties of the position to Claimants Gooding and Bettencourt, provided no overtime would be required of them.

The Carrier admits that Claimant Gooding worked a few minutes overtime on the day in question. Rule 46(c) is explicit in its requirement that no overtime be required of the remaining employees. Carrier argues that Claimant Gooding did not apply for overtime. However, the test is not whether an employee actually applied for overtime, but whether he actually worked overtime. Inasmuch as there is no dispute as to Claimant Gooding working overtime, the Carrier violated the terms of the agreement when it permitted him to work said overtime. Therefore, the claim of employee Gooding will be sustained.

There is no allegation or contention by Petitioners that Claimant Bettencourt worked overtime. Claimant Rhodes didn't work on the day in question. Thus, it is the opinion of this Board that the Carrier did not violate the terms of this agreement as to Claimants Bettencourt and Rhodes and their claims will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated in part in accordance with the Opinion.

AWARD

Claim (1) sustained to the extent that Carrier permitted Claimant Gooding to work overtime.

Claim (2) sustained.

Claim (3) denied.

Claim (4) 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 1966.