



Award No. 16940
Docket No. CL-16796

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6180) that:

1. Carrier violated the Clerks' Rules Agreement at Tacoma, Washington, when it assigned the Car Distributor work of Position 8002 to Mr. J. D. Wise who is presently classified as Special Representative to the Superintendent.

2. Carrier shall now be required to compensate employee R. L. Pierce for eight (8) hours at the overtime rate of Car Distributor Position 8002 for January 27, 1966.

EMPLOYEES' STATEMENT OF FACTS: Employee L. C. Smith is the regularly assigned occupant of Car Distributor Position 8002 at Tacoma, Washington and is assigned Monday through Friday, with Saturday and Sunday rest days.

Employee R. L. Pierce is the regularly assigned occupant of Swing Position No. 4 at Tacoma, Washington and is assigned Saturday through Wednesday, with Thursday and Friday rest days.

Employee J. D. Wise is the occupant of the position of Special Representative to Superintendent which is classified by Carrier as an Official Position.

On Thursday, January 27, 1966 employee L. C. Smith became ill at or shortly prior to 11:30 A.M. at which time he went to a doctor and was placed in the hospital.

In lieu of calling employee Pierce who was observing his Thursday rest day and who was available, willing and qualified to perform the duties of Position 8002 on that date, the Carrier assigned the duties of Position 8002 to Mr. J. D. Wise. (See copy of statements of employees R. L. Pierce and B. A. Dykes attached as Employees' Exhibit A and B).

Attached hereto as Carrier's Exhibits A and B are copies of letters written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under dates of May 20, 1966 and July 18, 1966 respectively.

(Exhibits not reproduced.)

OPINION OF BOARD: The regularly assigned occupant of Car Distributor Position No. 8002 after having worked 3½ hours of his position laid off account illness.

The instant claim was filed in behalf of Claimant R. L. Pierce alleging that from 11:30 A. M. to 5:00 P. M. on January 27, 1966, in lieu of calling Claimant who was available to perform the duties of Car Distributor Position No. 8002, the Carrier assigned the duties of the position to a Mr. J. D. Wise who was classified as a Special Representative of the Superintendent.

Carrier takes the position that no work of Position No. 8002 was performed by Mr. Wise during the hours that the position was vacant. In support thereof, Carrier submitted a notarized statement from him that he performed no work of Position No. 8002 on the day in question.

Petitioner offered evidence of opposing statements by Claimant and a B. A. Dykes to support its contention that Mr. Wise was the one who performed work on the remaining assigned hours of Position No. 8002.

We will follow the Board's reasoning and holding in Award 16165, which involved these same parties and a like situation, when the Board was confronted with evidence highly in conflict. It reads in part:

"We are, then, confronted with evidence highly in conflict. The written statements of those concerned are diametrically opposite and cannot be reconciled by the use of any appellate tools available to this Board. . . . No person who signed any of these statements was subjected to cross examination."

further;

"In a situation such as this, the Board is not required to conclude that any person involved was dishonest or untruthful. Since the evidence before us is so directly in conflict, an attempt on our part to reconcile it, or weigh it, is manifestly unjustified. This Claim should therefore be denied for the reason that the Brotherhood was unable to support its claim with evidence sufficient to meet the requirements of a reasonable burden of proof test."

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 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 5th day of February 1969.