

Award No. 18695
Docket No. CL-19073

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6910) that:

1. Carrier violated the Clerks' current Agreement when it failed to promptly transfer Claimant to his newly acquired Train Clerk position.

2. (a) That Train Clerk W. S. Moore now be compensated for the difference between the pro rata rate he was paid and the time and one-half rate for October 11, 18 and 25, 1969, and

(b) be compensated for eight hours, each date, October 9, 16, and 23, 1969, at the Train Clerk rate of \$26.99 per day.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. S. Moore, whose seniority dates from March 7, 1968 was, prior to October 9, 1969, the regular assigned occupant of Relief Clerk No. 2 position, Shreveport Yard Office, with following assignment:

Saturday	— Train Clerk	— 7:55 A. M.	— 3:55 P. M.	— \$26.99
Sun.-Mon.	— Train Clerk	— 3:55 P. M.	— 11:55 P. M.	— \$26.99
Tue.-Wed.	— I/C Clerk	— 3:55 P. M.	— 11:55 P. M.	— \$27.53
Thur.-Fri.	— Rest Days			

Under date of September 30, 1969, Superintendent W. J. Lacy, Pine Bluff, Arkansas, issued his Advertisement No. N-59-Clerks which reads, in part:

"Bids will be received in this office for a period of seven days from date, or until 5:00 P. M., October 7, 1969 on the following positions:

1. Train Clerk, Shreveport, Louisiana. Hours: 7:55 A. M. to 3:55 P. M., five days a week, rate \$26.99 an eight-hour day. Rest days Friday and Saturday. Briefly, duties consist of

agreed to extend the time limit in this case for a period of ninety (90) calendar days following decision in Docket CL-18573. (Employee Exhibit K) Award 18248 was rendered October 30, 1970 in Docket CL-18573. Thus the time limit for filing the instant dispute with the Board expires January 28, 1971.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Prior to the time involved here claimant W. S. Moore was assigned to Relief Clerk Position No. 2, Shreveport Yard, working as follows:

Sat.	Train Clerk	7:55 A.M. - 3:55 P.M.	\$26.99
Sun.-Mon.	Train Clerk	3:55 P.M. - 11:55 P.M.	26.99
Tue.-Wed.	Interchange Clerk	3:55 P.M. - 11:55 P.M.	27.53
Thur.-Fri.	Rest Days		

Position of Train Clerk at Shreveport, Louisiana, hours 7:55 A.M. to 3:55 P.M., Sunday through Thursday, with rest days Friday and Saturday, rate \$26.99 per day, was bulletined in Advertisement No. N-59-Clerks dated September 30, 1969. The claimant filed application for the position and footnote on Advertisement No. N-62-Clerks, dated October 9, 1969, designated him as the successful applicant.

There were no qualified extra clerks available and it was necessary for the claimant to remain on the Relief Clerk assignment until a clerk could be qualified to handle the duties of the position. The claimant was released from the Relief Clerk position at close of days' work, Monday, October 27, 1969, and protected the Train Clerk position at 7:55 A.M., Tuesday, October 28, 1969.

The Employee filed claim alleging that Carrier failed to promptly transfer claimant to the Train Clerk position subsequent to the assignment, and claimed that he should be paid the difference between the pro rata rate paid and the time and one-half rate on October 11, 18 and 25, 1969, on the basis that these were the rest days of the Train Clerk position. They also claimed that he should have been paid for 8 hours at the pro rata rate for each date October 9, 16 and 23, 1969, which were the rest days of the Relief Clerk position, on the basis that he should have been allowed to work the Train Clerk position.

The claim was denied.

Exhibits 1 and 2 are attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective April 1, 1946, reprinted January 1, 1963, copy of which is on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 30, 1969, Carrier advertised for bids on a position designated as Train Clerk, Shreveport, La. On October 9, 1969, Carrier advertised that Claimant was the successful applicant for this position. However, Claimant was not transferred from his Relief Clerk's posi-

tion to the Train Clerk's position until October 30, 1969. The Organization contends that by not promptly transferring Claimant in accordance with Rule 10, Claimant was forced to work on his prior assignment which resulted in Claimant's working on rest days under the new assignment for which he (Claimant) should be compensated at the time and one-half rate; and that Claimant was deprived of working his regular assignment on the days designated as rest days on the Relief Clerk's position. Carrier contends that Claimant would only be entitled to wage loss suffered, if any, only — under Rule 10-4; that Claimant suffered no wage loss; and that the rules fail to provide that the employee involved will take any of the conditions of the new assignment prior to actual transfer to the assignment. Carrier also alleges Claimant's transfer was promptly made under the circumstances.

This Board finds that Carrier was dilatory in affecting the transfer of Claimant within 6 days after advertising that Claimant was the successful applicant for position as Train Clerk, Shreveport, La. Rule 10-4 of the current Agreement specifically sets out the penalty for Carrier's failure to transfer promptly to the new assignment as being "wage loss suffered." There are no provisions contained in the rules for the relief claimed in numerical paragraphs 2(a) and (b). The Claimant, therefore, is entitled to "wage loss suffered" only. There being a specific penalty provided for in the rules, none other will be implied. Therefore, this claim will be sustained in the amount of the differential between Claimant's old assignment pay rate and the pay rate for the new assignment which Claimant was awarded. This differential is to be computed from October 15, 1969 (6 days after being awarded the new position) to October 30, 1969.

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.

AWARD

Claim sustained in amount equal to differential in pay rate, if any, between the two involved positions from October 15, 1969, to October 30, 1969.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1971.

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