

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21578
Docket Number CL-21337

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railway**, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7908) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Fort Madison, Iowa, on **Wednesday**, May 1, 1974, when it diverted Mr. B. D. **Aldinger** from his own **regular** assignment and forced and required him to protect a short vacancy on another assignment, then failed **and** refused to **pay** him an additional eight hours for his own regular assignment; **and,**

(b) Mr. B. D. **Aldinger** shall now be paid, in addition to **any pay** already received, eight (8) hours at the pro rata rate of \$41.8599 per **day**, rate of his regular assignment, Relief Telephoner Bridge Engineer Position No. 1 at Fort Madison, Iowa, for **Wednesday, May 1, 1974**.

OPINION OF BOARD: On **Wednesday, May 1, 1974**, Claimant was regularly assigned to work Tel-Brg-Engr Position No. 6109 from **11:30 P.M. to 7:30 A.M. @ \$41.8599**. Claimant desired to work his regularly assigned position and had not, as required by the agreement, requested in writing an opportunity to work another assignment.

Carrier desired a relief worker for the Position of Tel-Brg-Engr No. 6108 from **3:30 P.M. to 11:30 P.M., May 1, 1974** account the regular occupant thereof going on vacation.

Rule 32-N(1) of the parties' agreement is titled
, **"Emergency Relief Work"** and reads, in part pertinent hereto:

"A **regularly assigned employee will not be taken**
off his assignment to perform relief work except
in case **of an emergency**"

'In the absence of an emergency Carrier took Claimant from his regular assignment, caused him to work **assignment No. 6108**, and would not permit him to work his own **assignment No. 6109**. Nor would Carrier pay **Claimant** for the eight hours of his regular assignment of which he was deprived.

During handling of the claim on the property, there was no dispute over the term "short vacancy" in the Statement of Claim nor allegations of "emergencies." **Many** other matters, raised for the first time in Carrier's **ex parte** submission, are therefore improperly before us and consequently **are** not considered in reaching our decision. Our consideration is restricted to the handling given the case on the property.

The record is clear that, in the absence of any emergency as defined in the agreement, Carrier caused **Claimant** to be suspended from his regular position to perform relief work, a violation of the **agreement**, and **would** not thereafter permit him to work his own position because of the Federal Hours of Service Act.

Clearly, **Claimant** was deprived by the unauthorized action of the Carrier of his right to work the position he **had** acquired through the **exercise** of **his** seniority rights and is, therefore, entitled to the eight hours' pay he would have received in Position No. 6109 for **May 1, 1974 had** Carrier not violated his rights..

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

The sgreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 17th day of **June 1977**.