

### THIRD DIVISION

John B. **LaRocco**, Referee

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8938) that:

(a) Carrier violated Rule 41 and others of the Agreement on March 11, 1977 when they required and allowed the Yardmaster to bypass the Operator on duty and request a train movement from Train Dispatcher.

(b) Carrier now be required to compensate Mr. F. E. Thompson eight (8) hours pay at the pro rate rate of \$56.58 per day account this violation.

OPINION OF BOARD: Claimant, a cut-off clerk, properly filled a temporary vacancy in an operator position for the second trick on March 11, 1977 at Fulton Yard, Richmond, Virginia. During the performance of his duties on that date, claimant was required to leave his post to deliver orders to a train on the eastbound main line. Prior to leaving, the claimant specifically asked the Yardmaster if there were any other train moves. The Yardmaster gave him a "roundhouse to eastbound" move and no others. Claimant was absent for approximately six minutes. Upon his return, claimant discovered the Yardmaster had directly contacted the Train Dispatcher requesting a "Southern to the Eastbound Yard" move during the six minute period. Claimant immediately filed a claim for eight hours of pay at the rate of \$56.58 per day alleging that the Yardmaster violated the applicable agreement when he gave the "Southern to the Eastbound yard" move to the dispatcher.

The issue here is not a question of liability since the Carrier has conceded that, on March 11, 1977, claimant was entitled to handle the "Southern to the Eastbound Yard" move. Instead, the issue is what is the appropriate measure of damages. The Carrier has vigorously argued that claimant is not entitled to any compensation since he was on duty at the time. Furthermore, according to the Carrier, even if the claimant is entitled compensation, the extent of his entitlement is limited to actual damages pursuant to Rule 1 governing the scope of work. Thus, the Carrier offered and paid claimant six minutes of wage6 pro-rated from the daily rate of \$56.68. On the other hand, the Organization urges us to award eight hours of pay because the amount of damages is determined by Rule 41. Under prior settlements, on this property, the union argues there is support for damages greater than the six minute6 paid by the Carrier.

Rule **41** of the applicable collective bargaining contract  
**states:**

"No employe other than those covered by this Agreement and Train **Dispatchers** will be permitted to **handle** train orders at telegraph or telephone offices where an employe covered by this Agreement is employed and **is** available or can be promptly located, except in an emergency, in which case the employe covered by this **Agreement** will be **paid** for the **call**."

The clear and unambiguous language of Rule 41, **and** not Rule 1, controls the instant controversy. Claimant was available to handle the train move and he, indeed, expressly asked the Yardmaster if there were any other train **moves** before leaving his post. Rule **41** also provide<sup>6</sup> for a call payment when the **Carrier** violates the rule. However, **claimant is** not entitled to eight hours of Day. A review of the **historical** practice on this property for **settling** Similar disputes **discloses** that the proper measure of **damages** is three hours of pay pro-rated from the daily rate. Therefore, claimant shall be paid three **hours** of pay pro-rated from the **\$56.58** daily rate less the six **minutes** of **pay** which he previously received from the Carrier.

**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.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

