

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23418
Docket Number CL-23330

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station **Employees**
(Port Terminal Railroad Association

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9258)

(1) The Association violated the current Rules Agreement between the parties, including but not limited to Item 4 of Addendum No. 1, when on March 11, 1979, it called and used junior clerk R. R. Mills at overtime rate to fill the vacancy on **KPVC** Position No. 251 instead of calling and using senior clerk J. E. Berliski, who was available and qualified to perform the work.

(2) The Association shall compensate Mr. J. E. Berliski, Clerk, Houston, Texas, for eight (8) hours' pay at the time and one-half rate of **KPVC** Position No. 251 for March 11, 1979.

OPINION OF BOARD: Claimant J. E. Berliski was working in Carrier's General Office on March 11, 1979, in relief Position No. 479/130, on the 7:00 a.m. to 3:00 p.m. shift. A vacancy occurred in Position No. 251, which was also in the General Office, on the 3:00 p.m. to 11:00 p.m. shift. The extra board had been exhausted and the job had to be filled using regular **employees**. Claimant was the most senior employee available for the call and should have been offered the position. Instead, Carrier called and used R. R. Mills, a clerk **junior** to claimant.

The record of this case clearly reveals that claimant should have been offered the vacancy. As a result of an oversight, he was not called. Carrier argues that claimant was working in the General Office and **knew** that a junior employee was called. He should have made his claim at this point, rather than say nothing in anticipation of receiving a free day as a result of a claim at a later stage. Carrier argues that this inaction was inappropriate and claimant should not be awarded a windfall, even though a mistake was made.

Carrier also argues that in the initial claim, a day's pay was requested. **The** presentation before this Board requests a day's pay at time and one-half. This is an expended claim, not the same one presented on the property. The expended claim is not properly before this Board and should be dismissed.

This Board is persuaded that the original **claim** was for one day at the pro **rata** rate, not for time and one-half. This Board is also persuaded that Carrier did **make a mistake** and that claimant should have been offered the open job. Despite the argument that claimant **knew** a mistake was being **made** and did nothing about it, however, Carrier is liable for its actions.

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** for one day at the pro **rata** rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson

Executive Secretary

Dated at Chicago, Illinois, this **3rd** day of November **1981**.

