

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25379
Docket Number CL-24510

W. S. Coleman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9562**) that:

1a) Carrier violated Rules 12, 31, 35 and others of the Clerks' Agreement on January 9, 1977 when they improperly called and used Clerk **J. S. Wilkes** to fill a temporary vacancy on Position C-595 and did then fail to properly compensate him for service performed.

(b) Carrier now be required to pay Clerk Wilkes the difference between pro rata rate and punitive rate for service performed on January 9, 1977 and,

(c) Carrier further be required to allow Clerk Gus Stassinis eight (8) hours pay at the punitive rate of \$52.67 per day for January 9, 1977 account Carrier's improper use of Clerk Wilkes on this date.

(Carrier's file CG-11980)

OPINION OF BOARD: At the time of this claim, Clerk **J. S. Wilkes** was a furloughed **employee** at Newport News, Virginia. Claimant was protecting a temporary vacancy during the week of January 3-9, 1977. Claimant **worked** on January 3, 4 and 5. No work was available on January 6 and Claimant marked off sick on January 7 and 8. Claimant marked up and was called and worked on January 9, 1977. Prior to this incident, Carrier had notified Claimant that any absences for illness must be verified in order for him to qualify for sick pay. That verification was not submitted to Carrier until January 10th and Claimant was then allowed sick pay for January 7 and 8. Claimant was only authorized pro rata pay for January 9th. Organization contends that he should have been paid the punitive rate for that day, since Claimant received pay for 40 hours in five days immediately preceding January 9th.

At the same time, Clerk Gus Stassinis filed a claim for eight hours' pay at the punitive rate, because a Clerk junior to him was called to fill a position on an overtime basis on January 9, 1979.

Carrier contends that it was Claimant's obligation to produce the required **Doctor's** certificate before he marked up and indicated he was available for service. If he had done so, he would not have been called to work on January 9th and no claim from him or Claimant Stassinis would have resulted.

After a review of this record, this Board is persuaded that Claimant's failure to produce the required medical documentation is at the root of both claims cited in this case. Carrier should not be held responsible for Claimant's actions in this instance.

To sustain the instant claim would be to award a windfall to both Claimants that was brought about by Claimant **Wilke's** failure to meet his responsibilities. This Board cannot endorse such an outcome.

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 Carriers 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

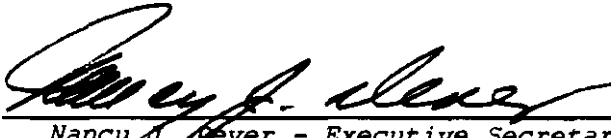
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.

LABOR MEMBER'S DISSENT TO
AWARD 25379 , DOCKET CL-24510
(REFEREE W. S. COLEMAN)

The majority opinion has erred in its decision. It stands unrefuted that Claimant Wilkes worked January 3, 4, and 5, 1977. He was off sick and paid under the provisions of Rule 60 for the dates of January 7 and 8, 1977, giving him a total of forty (40) straight time hours within that week. Therefore, in accordance with Rule 12, he was not available for service on a straight time basis on January 9, 1977. The fact that the Carrier chose not to credit sick payment for January 7 and 8, 1977 until after January 9, 1977 does not alter the clear provisions of Rules 12, 31 and 35 and it was because of such, Claimant Wilkes was entitled to the difference between straight time rate allowed and time and one-half for January 9, 1977.

The record is undisputed that Carrier ~~elected~~ to fill the vacancy on Position C-595 on January 9, 1977. It is equally clear that if the Carrier hadn't used Claimant Wilkes to fill the vacancy on Position C-595, in violation of Rule 12 and others, Claimant Stassinis would have stood for such work on an overtime basis under the provision of the local overtime agreement and thus is entitled to payment of eight (8) hours pay at the time and one-half rate as requested.

The majority has determined, based upon the record presented, that Claimant Wilkes was required to show proof of

when it stands unrefuted by both parties that if the Carrier had called the vacancy on the overtime basis, as they should have, Claimant Stassinis would have been the proper employee to call. Thus, it should logically follow that no matter whose fault it was, Claimant Stassinis should have been compensated.

Awards arrived at through faulty logic do not carry any precedential value. Award 25379 is palpably wrong.


William R. Miller, Labor Member

Date April 23, 1985