

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25636
Docket Number CL-25669

Lamont E. Stallworth. Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-9871**) that:

CASE NO. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement when it failed and/or refused to properly compensate Mr. R. L. Williams for holiday pay on Head Crew Clerk Position No. 6014 on **December** 24, 1982, and

(b) Mr. R. L. Williams shall now be paid an additional six (6) hours' pay at the time and one-half rate of Head Crew Clerk Position No. 6014, Wellington, Kansas, for December 24, 1982.

CASE NO. 2:

(a) Carrier violated the provisions of the current Clerks' Agreement when it failed and/or refused to properly compensate Mr. A. S. **Amberg** for holiday pay for service performed on Relief Head Crew Clerk Position No. 9300 (**6014**), Wellington, Kansas, for January 1, 1983, and

(b) Mr. A. S. **Amberg** shall now be paid an additional six (6) hours' pay at the time and one-half rate of Relief Head Crew Clerk Position No. 9300 (**6014**), Wellington, Kansas, for January 1, 1983.

OPINION OF BOARD: The instant dispute concerns claims **for** two individuals both of whom worked at Wellington, Kansas, Case No. 1 concerns R. L. Williams, who was employed as Head Clerk. On December 17, 1982, Claimant was informed that his regular position would not work on December 24, 1982, a holiday under the Agreement. It later developed that the position would be required on **December** 24 and Claimant was so notified on December 23. The Claimant told his Supervisor that he wished to be at home early on Christmas Eve and the parties "agreed" that he would be allowed to go home after three hours work. The Organization filed a claim on the basis that the **"agreement"** between the Claimant and his superior violated the Agreement between the Carrier and the Organization and that the Claimant was entitled to holiday pay for the period after he left work. The Claimant wrote a letter to the Carrier stating his opposition to the **Organization's** action and his desire that the claim not be processed.

Claim No. 2 involves Claimant A. S. **Amberg** who was the regularly assigned Relief Head Clerk at Wellington, **Kansas**. Claimant was advised on December 31, 1982, that he would be required to work the January 1, 1983, holiday. The Claimant stated that his family had already made plans for the holiday and that he wanted to depart after working three hours. The Carrier **"agreed"** that he could leave after three hours on January 1, 1983. The Organization filed a claim on the basis that the **"agreement"** between the Claimant and his Supervisor violated the Agreement between the Carrier and the Organization and that Claimant was entitled to holiday pay for the period after he left work. The Claimant wrote to the Carrier stating that he did not wish to have a claim processed on his behalf.

The instant disputes present the following issues: (1) whether or not Carrier is free to enter into Agreement with individual **employees** which abrogate the explicit terms of a Collective Bargaining Agreement, i.e., Rule 33-A (1), and (2) whether Carrier may agree to accommodate an **employee's** request that he be allowed to leave work before the end of his tour without the Carrier being liable for the period of the tour during which the **employee** was absent.

Upon a careful consideration of the record, the Board concludes that a Carrier does not have the right to enter into individual contracts with employees which serve to undermine the Agreement. **Arbitral** awards and case law are clear on this point. ORT v. Railway Express Agency 321 U.S. 342. However, in the instant dispute the Board is of the opinion that there is no evidence that such an individual contract was made. In the Board's view the Carrier in both instances accommodated the wishes of the Claimants which is permissible. Third Division Award 17158.

The Board is of the further opinion that absent evidence that such an arrangement was initiated by Carrier that it must be considered a request to be laid off and not an early quit.

In the instant dispute, the Board concludes Claimants initiated their lay-offs. Accordingly the Board concludes that the instant claims are without merit.

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 not violated.

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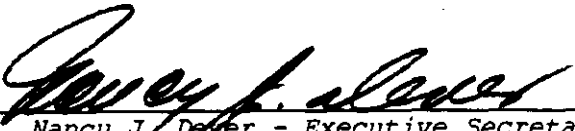
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Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.