

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41380
Docket No. MS-41746
12-3-NRAB-00003-110410**

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(J. S. Miles, Jr.

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

- “1. Claiming 6 days overtime pay at the rate of Savannah, GA General Clerk’s position 4J10-173, currently \$196.40 per straight time day, account the carrier violated Rule 12, as well as others, of the SCL/TCU clerical collective bargaining agreement, when on the dates of November 23, 30, December 7, 14, 21, and 28, 2009, all Mondays, the carrier allowed untrained and unqualified employees, either W. A. Johnson or A. B. Colson, to protect the Monday rest days of employee J. S. Miles, Jr.
2. The carrier shall now be required to pay claimant J. S. Miles, JR., ID No.XXXXX, 6 days pay at the overtime rate of \$294.60 per day for the dates referenced above, totaling \$1,767.60, for the above mentioned violations.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In this dispute, Petitioner J. S. Miles seeks pay for time spent by personnel who he asserts were unqualified CSXT employees protecting his Monday rest days. For the reasons that follow, the claim will be denied.

In declining this claim on February 19, 2010, the Carrier stated that it was its right and responsibility to determine employee fitness and ability. Accordingly, in this instance it represents that it had concluded that both W. A. Johnson and A. B. Colson “. . . have been at Southover Yard for many years, and were knowledgeable and fully qualified to perform relief work on your assignment in accordance with SCL Rule No. 19.”

Because the principle relied upon is established by multiple prior, precedential Third Division Awards, several of which were cited by the Carrier, on its merits the claim tacks into strong winds. It is, moreover, hobbled still further by several additional problems, both fatal to the Petitioner's position.

First, the Petitioner failed to cite any applicable Agreement support for his claim. Rule 12 of the Agreement, which he relied upon, addresses time in which to qualify. That issue is not implicated by this claim. As noted in Third Division Award 21858: “In case after case decided by this Board, we have repeatedly ruled that in order to establish a right to relief sought in the statement of claim, the Petitioner must firstly cite provisions of the agreement which prohibited Carrier from acting in the manner which Petitioner challenges. . . .”

Secondly, examination of the record in its entirety reveals that this claim follows on the heels of several earlier claims raising identical issues. Specifically, the dispute is substantively identical to those recently addressed by Third Division Awards 41092 and 41093. Therein the Board dismissed claims for overtime pay from Miles grounded on the same underlying facts as presented in this dispute, differing only as to the dates on which guaranteed extra board clerical employees

Colson and Johnson were alleged to have filled the Petitioner's position on his rest days.

The Board has an obligation to follow and adhere to the holdings of prior cases provided they involve identical issues and are otherwise indistinguishable from the disputes before us. Because the merits of this claim have already been decided, as was the case with Award 41093, the instant claim must be dismissed on grounds of res judicata.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of July 2012.