

Award No. 9643

Docket No. CL-9428

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated the provisions of the Clerical Agreement when, on the dates of April 23rd and April 30th, 1956 it failed and refused to call Clerk William Wynn to perform service on the Position of Janitor C-34 located at Stevens, Kentucky under the jurisdiction of Mr. K. B. Robertson, Trainmaster, Stevens, Kentucky.

(b) That the Carrier instead utilized the services of J. G. Stephenson in violation of the pertinent provisions of the Clerical Agreement, thus depriving the claimant of the opportunity to perform service on his regular position on an overtime basis, and

(c) That it shall now arrange to allow the claimant, William Wynn, eight hours pay at time and one half times the hourly rate of \$1.6025 per hour for each of the above claimed dates which is the amount he would have earned had he been properly called in accordance with the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Effective May 16, 1955 the parties concluded a Memorandum Agreement to establish Relief Assignment SA-5 consisting of two days (Saturday and Sunday) relieving Group 2 employes, and three days relieving Group 3 employes. A copy of the Memorandum Agreement is attached hereto and identified as Employees' Exhibit "A."

On April 9, 1956 the position became vacant and was bulletined for bids on April 11, 1956 (Employees' Exhibit "B").

Addendum Bulletin was issued on April 19, 1956 awarding the position to J. C. Stephenson, a Group 3 employe (Employees' Exhibit "C"). The Division Chairman called Management's attention to the fact that the Memorandum Agreement setting up the position stipulated that it should be considered a Group 2 position. The Carrier, then, on May 2, 1956 issued another Addendum Bulletin (Employees' Exhibit "D") canceling the award to Stephenson and

15, 1956. Obviously, therefore, he would have stood ahead of Wynn in preference for working Position C-34 on both April 23 and 30, 1956.

As already shown, Wynn's claim is without merit and should be denied.

All data contained in this submission have been discussed in conference or by correspondence with the Employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 4, 1955, the involved parties entered into an agreement establishing a Relief Position, identified as Number SA-5, to relieve two Group 2 Caller Positions and three Group 3 Positions of Janitor and Station Attendants on one rest day of the incumbents' rest days. This Relief Position was assigned to relieve Claimant Wynn on his Group 3 position of Janitor on rest day Monday at Stevens, Kentucky.

The Agreement, among other things, placed the position in seniority Group 2 for assignment purposes. It also provided:

"4. It is further agreed that when this position on any day or days is not worked by an employe who is assigned to it by bulletin, such work shall be performed under the provisions of Section (b) of Rule 35."

Rule 35(b) reads as follows:

"(b) **Work on Unassigned Days.** Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available 'cut off' (furloughed) employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe. In working regular employes hereunder, it is understood that where a small amount of work is required on each of two or more positions and only one employe is required, the employe regularly assigned to the majority of the work to be performed will be used."

On April 9, 1956, Relief Position SA-5 became temporarily vacant for an indefinite period and was bulletined on April 11, 1956, Bulletin No. 49. Under date of April 15, 1956, Relief Position C-35 was abolished and the incumbent, J. G. Stephenson, with seniority only in Group 3, became furloughed. Stephenson requested that he be allowed to fill Relief Position SA-5, pending assignment by bulletin, which was granted. Carrier admits it was in error by permitting Stephenson to exercise his Group 3 seniority to fill the Group 2 vacancy. Stephenson was later erroneously awarded the bulletined position in preference to a Group 2 employe (Devins) making application therefor. The mistake was rectified and bulletin cancelled, Devins being assigned thereto on May 9, 1956.

It is Claimant's contention that he should be paid a day's pay at the rate of time and one-half for each of his Monday rest days, April 23 and April 30, 1956, account Carrier's failure to call him on those dates under Section 4 of the Memorandum and Rule 35(b), supra. Claimant does not contend that he should have been used to fill the vacancy in the Group 2 Relief Position, nor that he should have been assigned thereto in accordance with his Group 3

seniority. The only employe qualified to assert such a claim was Devins, who had established seniority in Group 2. We have no claim from Devins.

It is alleged by the Petitioners and admitted by Carrier that Stephenson was erroneously assigned to the temporary vacancy. Consequently, the filling thereof clearly fell under Section 4 of the Memorandum, which specifically required that the work be performed under the provisions of Section (b) of Rule 35. The provisions of this Rule clearly relate to tag-end rest day work, or rest days that have not been incorporated into regular relief assignments. The Rule does not apply to the filling of vacancies or new positions. Award 7130.

It would follow, therefore, that it was proper to use furloughed Group 3 employe Stephenson at the pro rata rate, to perform the Group 3 work that was required on a day not a part of any assignment, in preference to Claimant at the punitive rate.

Claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1960.