

Award No. 9644

Docket No. CL-9513

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Oliver Crowther, Referee

PARTIES TO DISPUTE:

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

**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 22nd and April 29th, 1956 it failed and refused to call Clerk Paul Stubblefield to perform service on the position of Caller B-13 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. C. 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 Paul Stubblefield one day's pay at time and one half times the daily rate of \$13.77 per day 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:

(1) Effective May 16, 1955 the parties entered into a Memorandum Agreement setting up Relief Position SA-5 consisting of two days work per week relieving Group 2 employees and three days relieving Group 3 employees. A copy of the Memorandum Agreement is attached hereto and identified as Employees' Exhibit "A."

(2) Relief Position SA-5 became vacant and was advertised for bids by Bulletin No. 49 dated April 11, 1956 (Employees' Exhibit "B").

(3) While Position SA-5 was under bulletin, J. C. Stephenson, an employee holding Group 3 seniority only acquired a displacement right and was permitted to displace upon Position SA-5 effective April 17, 1956 (Employees' Exhibit "C").

(4) The Division Chairman called the Carrier's attention to the fact that J. C. Stephenson had no Group 2 seniority and, therefore, no right to displace

(Wynn and Mason) had no right under Rule 35, either Section (a) or Section (b), to claim such rest day work, and even though Stephenson was improperly on SA-5 by bulletin, he was entitled to the Group 3 work as a cut-off or furloughed employee in Group 3.

The claim in the instant case is for compensation for Stubblefield, whereas it is plain that if the errors had not occurred in awarding Position SA-5, Devins would have been on the position and Stubblefield would not have worked on his rest days at time and one-half rate as contended by this claim.

Devins is the employee who really had basis for claim if there was to be any claim, because he was entitled to fill SA-5 in accordance with his application for that position, SA-5 having been finally awarded to him. The fact that Devins has made no claim does not afford any basis for claim by Stubblefield (or the other regularly assigned employees). Devins certainly had no rightful claim for a time and one-half day, and Stubblefield cannot go in and make claim in Devins' place, compounding it to his own interest so as to claim 8 hours at time and one-half rate.

Scope of Rule 35 (b) Recognized in Award 6038

While the issues are not directly parallel, attention is called to the fact that the Employees in Third Division Award 6038 contended that their right to perform work on rest days extended to extra or additional positions worked on such days. The Board found that the Carrier had not violated Rule 35 (b) in such case, the doctrine of that award being, (the Carrier understands) that the regularly assigned employee in a case such as this is entitled to work his rest days at punitive or overtime rate only when necessary to work the regularly assigned employee on his rest day.

This case is companion to CL-9428.

As already shown, Stubblefield'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: This dispute arises from the same set of circumstances that confronted the Board in Award 9643, the only distinguishing feature being that Claimant Stubblefield here, was regularly assigned to a Group 2 Caller position that was relieved by "cut off" (furloughed) Group 3 employee Stephenson.

Employee Stephenson, not being a "cut off" or furloughed employee in Group 2, could not be used under Rule 35(b) to relieve Claimant on his rest days. Claimant, being "the regular employee," should have been called on his rest days, Sunday, April 22 and 29, 1956, under Rule 35(b), in the absence of an available "cut off" (furloughed) Group 2 employee who would otherwise not have 40 hours of work in that workweek.

If the relief position had been filled properly, the regular incumbent would have been compensated at the pro rata rate, therefore, the claim will be sustained for April 22 and 29, 1956, at the pro rata rate.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement. Claim will be sustained for the two dates involved, at the pro rata rate, in accordance with the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

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.