

Award No. 9645

Docket No. CL-9514

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 17, 18, 24, 25, May 1, and May 2, 1956, it failed and refused to call Clerk E. Mason to perform service on the position of Station Attendant, C-29, located at Newport, 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 E. Mason, 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:

(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").

Such doctrine makes it plain in the instant case that Mason was not deprived of service to which he had preferential right, as he is the incumbent of Group 3 Janitor position C-29, and as Stephenson was a cut-off or furloughed employe he stood ahead of Mason for the work on the dates of the claim. Stephenson, it will be seen from the above, was furloughed by abolishment of Position C-35 as of the close of work on April 15, 1956. Obviously, therefore, he would have stood ahead of Mason in preference for working Position C-29 on the dates of this claim except on April 17 and 18, 1956 as noted above.

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

This case is companion to CL-9428.

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

(Exhibits not reproduced)

OPINION OF BOARD: This is a companion case to Award No. 9643, involving the same parties and the same issue. Consequently, a denial Award is in order.

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.