

Award No. 9646

Docket No. CL-9515

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 21st and April 28th, 1956 it failed and refused to call Clerk Carol Simon to perform service on the position of Caller B-3 located at Covington, 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 Carol Simon 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 bulletined, 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'

rest days at punitive or overtime rate **only** when necessary to work the regularly assigned employee on his rest day because there are no cut-off or furloughed employees who can work unassigned rest days at straight time rate.

Such doctrine makes it plain in the instant case that Simon was not deprived of service to which he had preferential right, as he is the incumbent of Group 3 Janitor position C-34, and as Stephenson was a cut-off or furloughed employee he stood ahead of Simon for the work on April 21 and 28, 1956, both of such days being Monday. 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 Simon in preference for working Position C-34 on both April 21 and 28, 1956.

As already shown, Simon'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 Employee representatives.

(Exhibits not reproduced)

OPINION OF BOARD: This is a companion case to Award No. 9644, involving the same parties and the same issue. Therefore, the violation of the Agreement is sustained and the claim disposed of in accordance with the Opinion and Findings in Award No. 9644.

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 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 Carrier violated the Agreement 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.