

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. Carrier violated the Clerks' Agreement at Memphis, Tennessee, when it called unassigned extra clerk, C. M. Murdaugh, for work on Thursday, December 12, 1957, on Position No. 113, hours 11:00 P. M. to 7:00 A. M., rate \$17.25 per day, and after commencing his tour of duty, Mr. Murdaugh was released and told to go home, and was paid for a call, or two (2) hours' pay at penalty rate as his compensation for the day in question, and

2. That unassigned extra clerk C. M. Murdaugh shall now be allowed the difference between what he was paid for a call, and eight (8) hours' pay at pro rata rate that he should have received as compensation for Thursday, December 12, 1957.

EMPLOYEES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood an Agreement, effective June 23, 1922, as subsequently revised February 1, 1954, covering working conditions of the employees, which Agreement has been filed with the National Railroad Adjustment Board, as provided for in the Railway Labor Act, as amended, and this Agreement will be considered a part of this submission. Various rules thereof may be referred to herein from time to time without quoting them in full.

There are employed at Johnston Yard, Memphis, Tennessee, a force of employees who perform the clerical work necessary and incidental to the operation of said Johnston Yard and movement of freight trains in and out of this yard.

Claimant in this case, C. M. Murdaugh, is an unassigned extra clerk, and being unassigned extra clerk, works only if and when there is a vacancy open for him and is called for work in accordance with his seniority. Mr. Murdaugh was called to protect a vacancy on Thursday, December 12, 1957, on Position No. 113, hours 11:00 P. M. to 7:00 A. M., rate of pay \$17.25 per day. Mr. Murdaugh reported for duty at the prescribed time, and after his arrival, it was

The claim is completely without merit, and it should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Both parties agree upon the salient facts: On December 12, 1957 Claimant, extra clerk C. M. Murdaugh, was notified by the Chief Yard Clerk to report for work on a vacancy in Position No. 113. After he reported, Carrier discovered it made an error, since it already had a clerk with seniority assigned to the position. Mr. Murdaugh performed no work but was allowed two hours' pay and was released to go home. Claim is made that he be allowed the difference between the pay he received and a full eight hour wage.

The position of Claimant is that under the agreement of the parties when an extra clerk is called for duty he is entitled to a full day's pay as set forth in Rule 28.

Carrier denies violation of the agreement and designates the two hours compensation as a gratuity or applies Rules 40 and 34 (a) in paying Claimant on the basis of a call.

We cannot accept Carrier's position that because Claimant did not perform any work before he was released the agreement does not apply. He was called for work and was willing to perform the services as requested. The fact that he did not work was under the control of the Carrier. Once Carrier called Claimant and he reported for work, both parties were subject to the agreement.

The next question to be determined is which rule under the agreement to apply in compensating Claimant. Carrier's reasoning is difficult to follow since it takes the position that the agreement does not apply, and then it invokes Rules 40 and 34 (a) to justify two hours of compensation to Claimant. Carrier, moreover, relies on these rules which specifically refer to regularly assigned employees. Mr. Murdaugh was an unassigned extra clerk and obviously did not fall under the category designated in those rules.

We are aware of the inconsistencies in Carrier's arguments, but this factor does not prove the claim of Mr. Murdaugh. Since there was a breach in the agreement, Claimant is entitled to compensation based upon an appropriate rule. We find that Rule 28 describes the basis for pay without regard to employee's classification. It is the formula for determining the compensation of employees in the category of extra unassigned clerks like Mr. Murdaugh. Position No. 113, for which Mr. Murdaugh was called, apparently required a day's work of eight hours; for this was the assignment of the regular relief position for which employee was intended to substitute. The eight hour wage, not the call basis, should determine the wages. We hold that Mr. Murdaugh be allowed the difference between what he was paid for, a call, and an eight hour wage.

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

That the parties waived oral hearing;

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 the Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.