

Award No. 12995
Docket No. CL-12785

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**PHILADELPHIA, BETHLEHEM AND NEW ENGLAND
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5043) that:

(a) The Carrier violated the Agreement when it failed and refused to pay Janitor William Q. Barnett for August 18 and 19, 1960.

(b) The Carrier shall now allow Janitor William Q. Barnett two days' pay at the pro rata rate for August 18 and 19, 1960.

EMPLOYEES' STATEMENT OF FACTS:

1. On the dates covered by the claim, William Barnett was employed by the Carrier on the position of Janitor assigned to duties in the office building at Bethlehem, Pa. Claimants assigned hours were 4:00 P.M. to midnight. There were two other janitors employed in the building, one assigned to work midnight to 8:00 A.M. and the other from 8:00 A.M. to 4:00 P.M. The rest days of all positions were Saturday and Sunday.

2. The building in which Claimant Barnett is employed consists of three stories and a basement. It houses Carrier's General Office employees (mainly on the first floor and part of the basement) and employees of other Carriers, which, like the Respondent, are subsidiaries of Bethlehem Steel. Claimant Barnett's duties ordinarily were confined to the third, and one-half of the second floors of the building. The third-tour janitor worked mostly on the remaining half of the second floor and on the first. The first tour janitor's duties consisted generally of cleaning windows, dusting, and general janitor work for the building as a whole, and which were required during his tour of duty.

3. Claimant Barnett reported off duty on August 18 and 19, 1960 because of the death and funeral of his sister. During Claimant's absence, no one was employed in his place and no overtime was worked by the other two janitors as a result of Claimant's absence. Claimant's duties were looked after by the

more of continuous service with the Company at the beginning of an absence from work because of the death of his parent, wife, husband or child shall be paid his regular pay for not more than 5 scheduled working days during such absence, and shall be paid his regular pay for not more than 2 scheduled working days during an absence because of the death of an immediate relative not included among those listed."

POSITION OF CARRIER: Rule 17 (b) provides in pertinent part, that "when the work of an Employee is kept up by other Employees without cost to the Company" during an employee's absence due to the death of a relative, certain prescribed monetary allowances will be granted the absent employee. The issue before the Board is a simple one of fact, viz., did Janitors Hager and Batley keep up the work of claimant Barnett on August 18 and 19. If the Board finds the evidence supports an affirmative answer, the claim is valid. Conversely, if the Board holds in the negative, the claim must be denied.

It is the Carrier's position that Janitors Hager and Batley did not, and indeed could not, have kept up the work of claimant Barnett during his two days' absence. The signed statements of Janitors Hager and Batley fully support the Carrier's position, and the claim should be denied.

Janitors Hager and Batley have both stated that their assigned duties required 7 hours and 40 minutes to perform on each shift. Chief Clerk Long has stated that claimant Barnett's duties were comparable in quantity, and it is logical to assume that they also required 7 hours and 40 minutes to perform. The Carrier submits that it is highly improbable under the circumstances that the two other janitors performed all of their assigned duties and then absorbed an additional 3 hours and 50 minutes of the absent janitor's work, without working overtime. Actually, however, speculation on probabilities is not needed here.

Janitor Batley squelches any conjecture regarding his performance of Barnett's work by stating: "I did not perform any work normally done by Barnett." Janitor Hager also confirms the Carrier's contentions by stating: "I performed all the work normally done by myself and Barnett, except that I did not buff any floors". According to both Hager and Chief Clerk Long, buffing floors required one-half of Hager's normal tour of duty, and required an equal amount of time on Barnett's tour of duty. Thus Hager's failure to buff any floors resulted in his performance of only one-half of his normally assigned duties, and only half of Barnett's normally assigned duties. It should also be noted that Hager states that he performed part of Barnett's work "on my own, and without any orders from the Chief Clerk". (Emphasis ours.)

Rule 17 (b) clearly provides that an absentee allowance will be paid only "when the work of an Employee is kept up." The statements of Janitors Hager and Batley, the only janitors available to perform the work, clearly shows that the work of claimant Barnett was not "kept up", as required by the Rule. It is immaterial that the Carrier went without having the work done because of the absence of the employee; "doing without" is not have the work "kept up". In the absence of such showing, the claim must be denied. Awards 5818 and 6606 cited by the General Chairman in his letter dated April 27, 1941, are not pertinent since the work in both those cases was kept up.

OPINION OF BOARD: Claimant, William Barnett, was employed by Carrier as a Janitor, assigned to duties in the office building at Bethlehem, Pennsylvania, his assigned hours being 4:00 P.M. to midnight. There were

two other janitors employed in the building. Claimant Barnett reported off duty on August 18 and 19, 1960, because of the death and funeral of his sister. During Claimant's absence no one was employed in his place. Claimant's duties were looked after, at least in part, by the other two janitors with the knowledge of the Carrier.

Rule 17 (b) of the effective Agreement provides, as follows:

"(b) When the work of an Employee is kept up by other employees without cost to the Company, an Employee with one year or more of continuous service with the Company at the beginning of an absence from work because of the death of his parent, wife, husband or child shall be paid his regular pay for not more than 5 scheduled working days during such absence, and shall be paid his regular pay for not more than 2 scheduled working days during an absence because of the death of an immediate relative not included among those listed."

Carrier failed and refused to pay Claimant for the two days he was absent because of the death of his sister, an "immediate relative".

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.