

**Award No. 13530**

**Docket No. CL-12306**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**PARTIES TO DISPUTE:**

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

**CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-4839) that:

(a) Carrier failed to comply with Article V, Appendix No. 4 to the parties' agreement of February 1, 1938, which is a reproduction of the National Agreement dated Chicago, Illinois, August 21, 1954, in handling claims filed by and on behalf of F. LeVeque, No. 2 Yard-Station Clerk, Shops Yard Office, Springfield, Illinois and J. W. Baldridge, furloughed clerk, Springfield, Illinois.

(b) Claims of F. LeVeque, No. 2 Yard-Station Clerk and J. W. Baldridge, furloughed clerk, be allowed as presented, i.e.,;

1. LeVeque's claim for eight (8) hours, overtime rate for May 19, 1959 being senior qualified employee available on rest day and not called to work position of General Clerk, Taylorville.

2. Baldridge's claim for eight (8) hours pro rata rate for June 14, 1959 as No. 3 Yard-Station Clerk when not called for the extra work.

**EMPLOYEES' STATEMENT OF FACTS:** On May 19, 1959, J. P. Dexheimer, incumbent of the General Clerk position, Taylorville, Illinois was off duty. The hours of this assignment are 4:00 A. M. to 12 Noon and the vacancy was filled by utilizing W. H. Wells, on a rest day of his assigned Yard-Station Clerk position at Springfield, Illinois. Claimant LeVeque being senior to W. H. Wells filed claim as set forth in Employees' Exhibit A, to wit:

F. LeVeque: Claim for eight (8) hours overtime—Senior qualified employee available on rest day. Not called in accordance with and in complete disregard to Clerks' Schedule Agreement. Claim account W. H. Wells called to work position of General Clerk at Taylorville this date.

On June 14, 1959, O. B. Cornelius, regular assigned relief employee relieving No. 3 Yard-Station Clerk on this date, was off work account illness. The resulting vacancy was filled by utilizing a regular assigned employee on a rest day notwithstanding the fact, J. W. Baldridge, a furloughed employee who had not performed service in the week in which this vacancy occurred was available. Complaint was made the foregoing was violative of rules of our agreement by the filing of claim as set forth in Employees' Exhibit A-1, to wit:

### CONCLUSION

It is most obvious that the organization here seeks to corrupt the true facts by seeking payment of these two claims on the absurd position that the carrier failed to meet its obligations under the agreement. We believe the facts in this case clearly show that it was the organization who failed to meet their obligations when the Local Chairman failed to make other arrangements for conference with the Superintendent after being unable to attend the scheduled October 29, 1959 meeting. The organization then sought to distort this failure by the Local Chairman and twist it into a forfeiture status by the Superintendent. In a further effort to confuse the issue the General Chairman, contrary to the usual procedure, repeatedly sought to perfect the forfeiture appeal without even conferring with the Manager of Personnel.

A denial of these claims is, therefore, respectfully requested.

**FINDINGS:** The Third Division of the Adjustment Board finds:

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the complainant party and that hearing thereon was waived.

The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Nonoperating Employee Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 15):

"**FINDINGS:** (ART. V) The two claims involved in this docket were individually handled on the property.

"The issue to be resolved is whether the Carrier was in violation of Article V, 1(c) of the August 21, 1954 Agreement in that the Superintendent did not decide the claims involved within 60 days after they had been appealed to him.

"The Local Chairman of Clerks appealed the initial disallowance of such claims to the Superintendent. In keeping with the usual manner of handling, the Superintendent scheduled conference on the claims, which was to be held within 60 days of the appeal. The Local Chairman accepted the proposed conference and conference date, but on such date he was absent because of sickness and he did not show up for the conference. In a letter written after expiration of the 60-day period he explained his absence and asserted that Article V had been violated in that the Superintendent had not denied the claims within the time limit. The conference was later held and the claims were formally denied on appeal. The matter of extending the time limit for the Superintendent's decision on appeal was not given any handling.

"The National Disputes Committee rules that there was no extension of the time within which the Superintendent was required to render his decision on appeal, and finds that such decision was not rendered within the applicable time limit.

"In this connection the National Disputes Committee points out that where either party has clearly failed to comply with the requirements of Article V the claim should be disposed of under

Article V at the stage of handling in which such failure becomes apparent. If the carrier has defaulted, the claim should be allowed at that level as presented; and if the employee representatives have defaulted, the claim should be withdrawn.

"DECISION' The claims shall be allowed as presented, on the basis of failure of the Carrier to comply with the requirements of Article V of the Agreement of August 21, 1954.

"This decision disposes of this case. The docket is returned to the Third Division, N.R.A.B., for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

The above-quoted Findings and Decision dispose of all issues involved in the dispute and the docket, therefore, will be dismissed.

#### AWARD

Docket dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1965.