

Award No. 13640
Docket No. CL-12872

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5066) that:

1. The Carrier violated Rules 3, 11 (b) and 19 (c), among others, of the January 1, 1938 Agreement in failing to call and assign senior furloughed Clerk Phyllis S. Hayes to perform work on Clerk Position No. 4339, at Homestead, on January 4, 5, 6, 9, 10, 11 and 12, 1961 and that

2. The Carrier shall now be required to compensate claimant for a day's pay on each of the above dates because of its failure to comply with the terms of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: On January 3, 1961, Carrier advertised in Bulletin No. CL-2, position of Clerk at Homestead Agency.

Junior Clerk Jane R. Kinzey was called to protect this position beginning January 3 pending close of bids. On January 20, the claimant addressed the following letter to the District Chairman of the Brotherhood:

"On January 3, 1961, Position number 4339, Clerk Homestead Agency, was advertised and furloughed Clerk Jane R. Kinzey was called to protect this position.

"On January 3, 1961, I was protecting an extra Office Boy position at Miami Freight Agency for one day only. Being the senior furloughed clerk I should have been notified on January 3rd to start protecting Position No. 4339 effective January 4th. Since I was not called to protect this position and a junior clerk protected it pending assignment I would like to file claim for the seven days pay. The rate of pay on this position is \$2.2794 per hour and I would like to claim the total of 56 hours or \$127.68."

protect it with the threat of loss of seniority and employment relationship if he chose to make himself unavailable for call for such vacancies, or, retaining his seniority, chose to decline such vacancies as long as there were junior qualified employes available for such work.

The Railway has conclusively shown hereinabove that the specific provision of the Agreement under which the claimant was entitled to the work subject of dispute also required her to be available for the work. This provision (second sentence of Rule 19(c)) provides:

“Such employes (senior furloughed employes), when available shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin.” (Interpolation and emphasis added.)

Patently the claimant was not available as manifested by the lack of response to the numerous attempts by three employes to call her by telephone, the Railway's assertion in this respect being fully supported by Carrier's Exhibits “A”, “B” and “C” attached hereto.

For the reasons stated, the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 3, 1961, Carrier posted a bulletin advertising Clerk Position No. 4339. Pending the assignment to the successful bidder, Carrier on that date called Jane R. Kinzey to perform the work. She worked January 3, 4, 5, 6, 9, 10, 11 and 12.

Phyllis S. Hayes, a furloughed Clerk senior to Jane R. Kinzey, makes claim that Carrier violated the Agreement, specifically Rules 3, 11 (b), and 19 (c) when it failed to call her on January 3rd to report to work on Position No. 4339. On that date she was filling a one-day vacancy at the Miami Freight Agency. Claimant argues that Carrier knew that she was at the Miami Freight Agency and that it could readily have notified her at that location to report for the work to which her seniority entitled her. She also maintains that Carrier did not avail itself of the many methods at its disposal to reach her during the period between January 4 and 12th and that when it finally did use one of these methods, it succeeded in locating her; and she reported to work on January 13th.

Claimant listed her resident telephone number as the location where she was to be reached when a position was available. According to this plan, known and acceptable to both parties, Carrier made concerted effort to notify her by telephone. The record fails to show that she was available to receive the messages to report to work. In fact, it shows that the Miami Freight Agency also failed in its efforts to reach her on January 5 and 6th for vacancies at that Agency which she could have filled on January 6th and January 9th.

Although Carrier, in a conference on April 26, 1961, agreed to pay Clerk Hayes for January 4th, since it overlooked notifying her while she was working at the Miami Freight Agency on January 3rd, this action does not invalidate the genuine efforts made by Carrier to notify her on the

subsequent dates, nor does it relieve her of the obligation to be available for the work when called. The record is not clear as to whether she received the compensation for January 4th which Carrier agreed to pay her. If payment has not been made, she is entitled to it.

We hold that Carrier made reasonable efforts to communicate with Clerk Hayes in accordance with the Agreement. The claim is denied. Compensation, however, is to be awarded for January 4th, if such payment has as yet not been made.

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 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 the Agreement was not violated.

AWARD

Claim denied in accordance with the opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1965.

LABOR MEMBER'S DISSENT TO AWARD 13640, DOCKET CL-12872

The Opinion of Board reads in part as follows:

"Although Carrier, in a conference on April 26, 1961, agreed to pay Clerk Hayes for January 4th, since it overlooked notifying her while she was working at the Miami Freight Agency on January 3rd, this action does not invalidate the genuine efforts made by Carrier to notify her on the subsequent dates, nor does it relieve her of the obligation to be available for the work when called. The record is not clear as to whether she received the compensation for January 4th which Carrier agreed to pay her. If payment has not been made, she is entitled to it.

We hold that Carrier made reasonable efforts to communicate with Clerk Hayes in accordance with the Agreement. The claim is denied. Compensation, however, is to be awarded for January 4th, if such payment has as yet not been made."

In view of the possibility of payment to Claimant for January 4, if such has not previously been made by Carrier, we requested the Majority to issue an Order to accompany Award 13640, which request was denied.

We dissent to the Majority's denial of that request.

C. E. Kief,
Labor Member.