

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5442) that:

(1) The Carrier violated the Clerks' Agreement of December 1, 1956, as amended, when it refused to properly compensate regularly assigned Relief Clerk 'A', J. H. Burdeshaw, at Albany, Georgia Yard Office for a full eight (8) hour day when he was called on October 25, 1962, one of his assigned rest days, to complete the assignment of regularly assigned Clerk I. C. Willis at that point, when the latter became ill of virus and headache and was unable to finish his assignment.

(2) Relief Clerk 'A' J. H. Burdeshaw shall now be compensated for an additional one (1) hour and forty-five (45) minutes at the time and one-half rate of his position, salary \$490.40 per month, for October 25, 1962.

EMPLOYEES' STATEMENT OF FACTS: Relief Clerk 'B', I. C. Willis, was regularly assigned to work on Wednesday, October 24, 1962, having begun his assignment for that day at 11:59 P. M., which would terminate at 7:59 A. M., on Thursday, October 25, 1962. Clerk Willis' assignment, which is identified as Relief Clerk 'B's', works as follows:

3:59 P. M. to 11:59 P. M., Mondays, relieving Yard Clerk
D. C. Davis

11:59 P. M. to 7:59 A. M., Tuesdays and Wednesdays, relieving
Utility Clerk B. J. Warren

11:59 P. M. to 7:59 A. M., Thursdays and Fridays, relieving Util-
ity Clerk A. W. Lawrence

Rest days, Saturdays and Sundays, salary, \$486.90 per month.

AWARD

Claim denied."

AWARD 6379

Third Division (Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation.

AWARD

Claim denied."

AWARD 6378

Third Division (Kelliher)

"Based upon an analysis of all of the evidence, it must be found that the petitioners have failed to sustain the burden of proof, and, therefore, claim is accordingly denied.

Claim denied."

AWARD 5418

Third Division (Parker)

" * * * Under our decisions (see, e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance, and where that burden is not met, a denial Award is required for failure of proof.

AWARD

Claim denied."

Also see other awards, including Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6225, 5941, 2676 and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996 and others, all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Employees have produced no evidence of any violation.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny the claim in its entirety.

OPINION OF BOARD: Relief Clerk 'A' J. H. Burdeshaw was called on one of his rest days to complete the assignment of Yard Clerk I. C. Willis, who became ill after reporting for work at 11:59 P. M. on Wednesday, October 24, 1962. Mr. Willis left his assignment at 1:30 A. M. on Thursday, October 25, and Mr. Burdeshaw worked the remainder of the eight hour day, a period of six hours and fifteen minutes, for which he received compensation at the time and one-half rate. He makes claim that under Rule 35 (e), he is entitled to compensation for a full eight-hour day at penalty rate, or, an additional one hour and forty-five minutes at time and a half.

Rule 35 (e), Service on Rest Days, provides that:

"Service rendered by employes on assigned rest days shall be paid for under the call rule, unless relieving an employe assigned to such day, in which case they will be paid for eight (8) hours at the rate of the position occupied, or their regular rate, whichever is higher. Where Sunday is one of the rest days, service on Sunday will be paid for as provided in Rule 36. Regular assigned rest days shall not be changed except after such advance notice to the employe as is required under applicable rules."

Since Claimant on his rest day relieved the regularly assigned relief clerk 'B' assigned to such day, he is entitled to be compensated for the full eight hours under the above rule. His claim for payment for an additional one hour and forty-five minutes at time and one-half rate is sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1965.