

Award No. 14118

Docket No. CL-14889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5517) that:

(1) Carrier violated the Clerks' Agreement December 17, 1962, when it failed to use Mr. C. B. Whittington on temporary vacancy of Messenger position.

(2) Mr. C. B. Whittington be compensated for eight hours at the time and one-half rate of Line Desk position, Cotton Belt Yard Office, Dallas, Texas, for December 17, 1962. This to be in addition to that already paid him for the same date.

EMPLOYEES' STATEMENT OF FACTS: On Monday, December 17, 1962, there was a temporary vacancy on position of Messenger, Dallas, Texas. The position is assigned to work 7:00 A.M. to 3:30 P.M., Monday through Friday, with Saturday and Sunday rest days.

Mr. M. M. Brand, with Group 1 seniority dating from September 3, 1954, was used to fill the vacancy. His assigned hours of Line Desk Clerk are 12 M.N. to 8:00 A.M., Friday through Tuesday, Wednesday and Thursday rest days.

Mr. Whittington is regularly assigned to a relief clerk position working as follows:

Sunday	Yard Clerk No. 2	7:00 A.M. to 4:00 P.M.
Monday-Tuesday	Line Desk Clerk No. 1	4:00 P.M. to 12:00 M.N.
Wednesday-Thursday	Line Desk Clerk No. 2	12:00 M.N. to 8:00 A.M.
Friday-Saturday	Rest Days	

It will be noted that Mr. Whittington was working on Monday, December 17, 1962, 4:00 P.M. to 12:00 M.N., and was available, qualified and willing to work the vacancy, but was denied this right. It appears that Carrier instructed Mr. Brand to work continuously on through his assigned

In conclusion, Carrier asserts that there is no merit nor rule support for the Employee's claim, and Carrier, therefore, respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim was initiated on the property by a letter from the Employees' Division Chairman to the General Yardmaster, St. Louis Southwestern Railway Company, Dallas, Texas. We quote from this letter:

"Statement of Claim:

1. Carrier violated the Clerks' current Agreement December 17, 1962, when it failed to use Mr. C. B. Whittington on temporary vacancy of Messenger position.

2. That Mr. Whittington be compensated for eight hours at the time and one-half rate of Line Desk Clerk position Cotton Belt Yard Office, Dallas, Texas, for December 17, 1962. This to be in addition to that already paid him for the same date."

This letter is reproduced in full at record page 12, and identified as Employees' Exhibit A. The entire correspondence on the property, as submitted by the Employees, includes Employees' Exhibits A, B, C, D, E, F, G, H and I. This encompasses record pages 12 through 22.

Throughout the handling of this claim on the property the Employees alleged that the agreement was violated when the Carrier failed to use Mr. C. B. Whittington on temporary vacancy of Messenger position on December 17, 1962. At no time did the Employees point out what Rule or Rules of the Agreement had been violated.

Award 13741 (Dorsey) states:

"We are of the opinion that when, on the property, a claim is made stating that an agreement has been violated without specifying the rule(s) allegedly violated, and Carrier responds that it is not aware of any rule prohibiting the action complained of, the burden shifts to the Organization to particularize the rule(s).

It is axiomatic that: (1) the parties to an agreement are conclusively presumed to have knowledge of its terms; and (2) a party claiming a violation has the burden of proof.

When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the movant, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board—this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it's the intent of the Act that issues in a dispute, before this Board, shall have been framed by the parties in conference on the property.

Upon the record, as made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss this claim."

See also Award 13283 (House).

The Carrier raised other reasons for denial of this claim. We need not consider the other reasons raised by the Carrier. It is apparent from the record that the Carrier raised the issue that the Employees failed to cite a violation of any particular rule(s) of the agreement. (See record pages 15 and 22.)

For the reasons above stated, we are unable to adjudicate the merits of the claim, and will dismiss the claim.

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 upon the record made on the property we are unable to adjudicate the merits of the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1966.