

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5534) that:

(a) The Carrier unjustly dismissed clerical employe Mr. W. L. Wilkes, Crew Dispatcher and Chief Caller, from its service.

(b) The Carrier shared an equal responsibility for the offenses for which Mr. W. L. Wilkes was discharged from service.

(c) Mr. W. L. Wilkes shall now be compensated one day's pay for each date that he would have worked for the period, from January 14, 1963 until February 2, 1963, had he not been withheld from the service of the Carrier.

OPINION OF BOARD: The issue is whether Claimant was unjustly dismissed and held out of service from January 15, 1963, until February 2, 1963.

Claimant, who was a Crew Dispatcher and Chief Caller, was charged with failure "to call two switchmen for yard run No. 6-HY, going to work at Inman Hump 12:00 MN., January 14, 1963, which resulted in a 2-hour delay to this run." He was also charged with failure to leave proper line-up of the switch engine assignments at the end of his tour of duty. His scheduled work hours were from 3:00 P. M. to 11:00 P. M.

At the Investigation, Claimant admitted that he had failed to call the two switchmen for yard run No. 6-HY, and that he did not bring this to the attention of his relief employe. His excuse was that he had been performing the duties of two men.

It is true that at the time the clerical force in the Call Office was reduced from eight to four assigned positions. And it is conceivable that the work load was, perhaps, heavier than theretofore. But Claimant did not complain that he was overworked. Claimant's representative at the Investigation said, "I don't believe Mr. Wilkes would be responsible, don't believe it is Mr. Wilkes' responsibility to notify the Company that they don't have enough men to carry on the work in the Call Office." But it was Mr. Wilkes' responsibility to advise his

relief employe that the two switchmen positions had to be filled and it was his responsibility to avoid the two hour delay of yard run No. 6-HY.

A review of the record shows that the Investigation was properly conducted, that there are no procedural errors, and that there is no basis for the contention that Carrier's action was arbitrary, capricious or made in bad faith.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.

LABOR MEMBER'S DISSENT TO AWARD 14180, DOCKET CL-14996

Award 14180, Docket CL-14996, is in error and incorrectly states that Claimant did not complain that he was overworked.

That, precisely, was his entire defense and was clearly proven. Merely scanning the first statement in the investigation will reveal that Claimant said:

" * * * I failed to call the two switchmen in question * * * we are now performing the duties of two men * * *."

etc., and, immediately following:

" * * * I overlooked it on account of the fact that I did not have time to make up the line-up on account of all the duties that were on me that particular day."

Now the record clearly and conclusively showed that Claimant had exhausted his supply of extra men; that he was "jumping up men"; that he had actually contacted 91 employes; had been securing help from the tower to have men presently working call in so he could get them to "double" etc. All in all, to anyone familiar with such an operation, Claimant had a most hectic day.

Such circumstances should have been fully considered by Carrier and, if not, then most certainly by the Referee. Had they been considered the unconscionable discharge of Claimant could not have been condoned for, in view of the circumstances, the work force having been halved with no reduction in the amount of work, Carrier's action was clearly an abuse of discretion.

I therefore dissent.

LABOR MEMBER

D. E. Watkins