

Award No. 14633
Docket No. CL-14696

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5495) that:

- (1) The Carrier violated the rules of the Clerks' Agreement of December 1, 1956, as amended, when beginning around March 19, 1963 and continuing thereafter, it ignored the provisions of Memorandum No. 24 as outlined on pages 170 and 171 of said Clerks' Agreement and attempted to substitute therefor the provisions of a unilaterally instituted interpretation of a memorandum dated March 31, 1959, and that, therefore,
- (2) Clerk W. D. Stevens shall now be paid eight (8) hours at the pro rata rate of his position for March 29, 1963 account being run around by junior employee, W. L. O'Quinn, and that
- (3) Clerk T. E. Rhodes shall likewise be paid for eight (8) hours at the pro rata rate of his position for March 26, 1963 account being run around by junior clerk W. L. O'Quinn, and that
- (4) Clerk J. O. Lewis shall likewise be paid for eight (8) hours at the pro rata rate of his position for March 30, 1963 account being run around by junior Clerk B. E. Hooker, and that
- (5) Clerk H. J. Conaway shall likewise be paid for eight (8) hours at the pro rata rate of his position for March 30 and March 31, 1963, and April 1, 1963, account being run around by junior clerk L. C. Gooding.

EMPLOYEES' STATEMENT OF FACTS: April 1, 1963, then Local Chairman J. R. Gooding presented a claim in behalf of the above named employees and this claim which was addressed to Terminal Trainmaster N. S. Smith, the proper Employing Officer, is hereto attached together with supporting tickets and identified as Employees' Exhibit No. 1. The supporting tickets are identified as Employees' Exhibits Nos. 1(a), 1(b), 1(c), 1(d), 1(e), and 1(f) respectively.

The next pertinent communication of record concerning this matter was a copy of a letter dated February 24, 1964, from Mr. C. L. Dennis, Grand President of the Brotherhood of Railway Clerks, of Cincinnati, Ohio, to Mr. S. H. Schulty, Executive Secretary, Third Division of the Adjustment Board, stating that the Organization was appealing this dispute for adjudication.

There is an agreement in effect between the parties, effective December 1, 1956, as amended. Since there are no rules, interpretations, or historical practice to substantiate the Petitioner's claim, it has been denied in its entirety by the officers of the Carrier.

OPINION OF BOARD: The controlling issue in the instant claim is whether or not the claims herein are governed by Memorandum Agreement No. 24 or by the Memorandum of Understanding, dated March 31, 1959 between the parties hereto.

First, the Carrier's contention that the claims be dismissed because the claims on the property were for overtime rate of pay and the claims before this Board are for pro rata rate of pay is without merit for the reason that the claims have not been substantially amended so as to prejudice the Carrier in any way in its defense to said claims.

The facts were that vacancies in Yard Clerk positions in the Savannah, Georgia yard arose due to illness of the regular assigned employees. Claimants herein did not file written desire to fill the temporary positions on the dates in question. The Carrier assigned employees with less seniority than Claimants to fill the vacant positions.

The Organization claims that the Memorandum Agreement No. 24, covering interpretations as to Overtime Provisions, is the governing rule, and that the Carrier violated said Memorandum Agreement No. 24 when it failed to call Claimants for the vacant positions of Yard Clerks.

The Carrier's position is that it did not violate any terms of the agreement and that specifically the Memorandum of Agreement of March 31, 1959 between the parties hereto was not complied with by the Claimants herein when they failed to file a written desire to fill the temporary vacancies in question herein.

The pertinent parts of Memorandum of Understanding of March 31, 1959, is as follows:

- "2. It is mutually agreed and understood that in future in instances where temporary vacancies are filled, the available senior qualified employee at the point or office involved, expressing a written desire to fill the temporary vacancy (Rule 10), will be allowed to work the position and will be paid the rate of the position which he temporarily fills."

Rule 10, Vacancies, states:

"(a) Positions or vacancies of thirty (30) days or less duration shall be considered temporary, and may be filled without bulletining.

(b) Positions or vacancies of indefinite duration need not be bulletined until the expiration of thirty (30) days from date of employment or vacancy.

(c) Positions or vacancies known to be of more than thirty (30) days' duration will be bulletined and filled in accordance with these rules.

NOTE: Also see Memo Agreement No. 2 in back of this book."

Memorandum Agreement No. 2 deals with positions vacant because of leave of absence, and the Organization argues that this Memorandum No. 2, in its relation to Rule 10 and in turn to Memorandum of Understanding of March 31, 1959, governs short vacancies which contemplate a written leave of absence, whereas Memorandum Agreement No. 24 covers short vacancies not requiring written leaves of absence. With this conclusion, we cannot agree. Memorandum Agreement No. 2 is in addition to Rule 10 of the Agreement and does not mean that Rule 10 governs only vacancies occurring because of leaves of absence, and thus Organization's contention that Memorandum of Understanding is not applicable to the present problem is without merit.

Therefore, it is the opinion of this Board that the Petitioners herein failed to comply with the Memorandum of Understanding of March 31, 1959, when they did not file written desires to fill the vacant positions in question, as required by said Memorandum of Understanding, and that the Carrier did not violate the terms of the Agreement. The claims must be denied.

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 the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.