

Award No. 18248
Docket No. CL-18573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6707) that:

(1) Carrier violated the Clerks' current Agreement when it failed to promptly transfer Claimant to his newly acquired Yard Clerk position after being assigned thereto on Advertisement No. N-49-Clerks of September 3, 1968, and, instead held him on his prior assignment of Car Clerk, causing him to work his Monday and Tuesday rest days, until Thursday, September 27, 1968, and failed and refused to properly compensate him therefor under the rules of that Agreement.

(2) That Mr. F. C. Willcockson now be paid the difference between the straight time rate he was paid and the time and one-half rate he was entitled for six days, September 9, 10, 16, 17, 23 and 24, 1968, when he was required to work his regularly assigned rest days.

(3) That Mr. F. C. Willcockson also be paid for eight hours' time each date, September 11, 12, 18, 19, 25 and 26, 1968, at the pro rata rate of his Yard Clerk position when he was available, but was not allowed to work his Yard Clerk position.

EMPLOYEES' STATEMENT OF FACTS: On and prior to September 3, 1968, Claimant was the regularly assigned occupant of a Car Clerk position, Jonesboro, Arkansas, working 3:00 P. M., to 11:00 P. M., Friday through Tuesday, with Wednesday and Thursday rest days.

August 22, 1968, Superintendent W. J. Lacy, Pine Bluff, Arkansas, issued his Advertisement No. N-47-Clerks which reads, in part, as follows:

"Bids will be received in this office for a period of seven days from date, or until 5:00 P. M., September 5, 1968, on the following positions:

* * * * *

1. Yard Clerk, Jonesboro Yard, Hours 7:55 A. M., to 3:55 P. M., five days a week, rate \$24.27 an eight hour day. Rest days Monday and

CARRIER'S STATEMENT OF FACTS: Prior to the time involved here Claimant F. C. Willcockson was assigned to position of Car Clerk at Jonesboro, hours 3:55 P. M. to 11:55 P. M., Friday through Tuesday, with rest days Wednesday and Thursday, rate of pay \$24.41 per day.

Position of Yard Clerk at Jonesboro, Arkansas, hours 7:55 A. M. to 3:55 P. M., Wednesday through Sunday, with rest days Monday and Tuesday, rate of pay \$24.27 per day, was bulletined in Advertisement No. N-47-Clerks dated August 22, 1968. The claimant filed application for the position and footnote on Advertisement No. N-49-Clerks, dated September 3, 1968, designated him as the successful applicant.

There were no qualified extra clerks available and it was necessary for the claimant to remain on the Car Clerk assignment until an employee could be trained to handle the duties of the position. The claimant was released from the Car Clerk position at close of day's work September 24, 1968, and protected the yard clerk position at 7:55 A. M., Friday, September 27, 1968.

The Employees filed claim alleging that Carrier failed to promptly transfer claimant to the Yard Clerk position subsequent to his assignment, and claimed that he should be paid the difference between straight time rate paid and the time and one-half rate on September 9, 10, 16, 17, 23 and 24, 1968, on the basis that these were the rest days of the Yard Clerk position. They also claimed he should be paid for 8 hours at pro rata rate on each date September 11, 12, 18, 19, 25 and 26, 1968, which were the rest days of the Car Clerk position, on the basis that he should have been allowed to work the Yard Clerk position.

The claim was denied.

Exhibits 1 to 4, inclusive, are attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective April 1, 1946, reprinted January 1, 1963, copy of which is on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The record reveals this claim was appealed to the Manager-Personnel, the highest designated officer of the Carrier, by the Organization's General Chairman on January 2, 1969; said Carrier officer timely denied the appeal in letter of January 22, 1969. Under the provisions of Article V, Section 1(c) of the National Agreement of August 21, 1954, the Organization had nine months from the date of Carrier's denial to institute proceedings before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment. The Employees instituted proceedings before this Division by letter of October 29, 1969, which is not within the required nine months' time limit. Therefore, the claim is barred from consideration by the Board and is dismissed.

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 claim is barred and should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1970.