

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21578
Docket Number CL-21337

William G. Caples, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7908) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Fort Madison, Iowa, on Wednesday, May 1, 1974, when it diverted Mr. B. D. Aldinger from his own regular assignment and forced and required him to protect a short vacancy on another assignment, then failed and refused to pay him an additional eight hours for his own regular assignment; and,

(b) Mr. B. D. Aldinger shall now be paid, in addition to any pay already received, eight (8) hours at the pro rata rate of \$41.8599 per day, rate of his regular assignment, Relief Telephoner Bridge Engineer Position No. 1 at Fort Madison, Iowa, for Wednesday, May 1, 1974.

OPINION OF BOARD: On Wednesday, May 1, 1974, Claimant was regularly assigned to work Tel-Brg-Engr Position No. 6109 from 11:30 P.M. to 7:30 A.M. @ \$41.8599. Claimant desired to work his regularly assigned position and had not, as required by the agreement, requested in writing an opportunity to work another assignment.

Carrier desired a relief worker for the Position of Tel-Brg-Engr No. 6108 from 3:30 P.M. to 11:30 P.M., May 1, 1974 account the regular occupant thereof going on vacation.

Rule 32-N(1) of the parties' agreement is titled
"Emergency Relief Work" and reads, in part pertinent hereto:

"A regularly assigned employee will not be taken off his assignment to perform relief work except in case of an emergency"

In the absence of an emergency Carrier took Claimant from his regular assignment, caused him to work assignment No. 6108, and would not permit him to work his own assignment No. 6109. Nor would Carrier pay Claimant for the eight hours of his regular assignment of which he was deprived.

During handling of the claim on the property, there was no dispute over the term "short vacancy" in the Statement of Claim nor allegations of "emergencies." Many other matters, raised for the first time in Carrier's ex parte submission, are therefore improperly before us and consequently are not considered in reaching our decision. Our consideration is restricted to the handling given the case on the property.

The record is clear that, in the absence of any emergency as defined in the agreement, Carrier caused Claimant to be suspended from his regular position to perform relief work, a violation of the agreement, and would not thereafter permit him to work his own position because of the Federal Hours of Service Act.

Clearly, Claimant was deprived by the unauthorized action of the Carrier of his right to work the position he had acquired through the exercise of his seniority rights and is, therefore, entitled to the eight hours' pay he would have received in Position No. 6109 for May 1, 1974 had Carrier not violated his rights.

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

The agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.