

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23318
Docket Number CL-23279

John B. LaRocco, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8938) that:

(a) Carrier violated Rule 41 and others of the Agreement on March 11, 1977 when they required and allowed the Yardmaster to bypass the Operator on duty and request a train movement from Train Dispatcher.

(b) Carrier now be required to compensate Mr. F. E. Thompson eight (8) hours pay at the pro rata rate of \$56.58 per day account this violation.

OPINION OF BOARD: Claimant, a cut-off clerk, properly filled a temporary vacancy in an operator position for the second trick on March 11, 1977 at Fulton Yard, Richmond, Virginia. During the performance of his duties on that date, claimant was required to leave his post to deliver orders to a train on the eastbound main line. Prior to leaving, the claimant specifically asked the Yardmaster if there were any other train moves. The Yardmaster gave him a "roundhouse to eastbound" move and no others. Claimant was absent for approximately six minutes. Upon his return, claimant discovered the Yardmaster had directly contacted the Train Dispatcher requesting a "Southern to the Eastbound Yard" move during the six minute period. Claimant immediately filed a claim for eight hours of pay at the rate of \$56.58 per day alleging that the Yardmaster violated the applicable agreement when he gave the "Southern to the Eastbound yard" move to the dispatcher.

The issue here is not a question of liability since the Carrier has conceded that, on March 11, 1977, claimant was entitled to handle the "Southern to the Eastbound Yard" move. Instead, the issue is what is the appropriate measure of damages. The Carrier has vigorously argued that claimant is not entitled to any compensation since he was on duty at the time. Furthermore, according to the Carrier, even if the claimant is entitled compensation, the extent of his entitlement is limited to actual damages pursuant to Rule 1 governing the scope of work. Thus, the Carrier offered and paid claimant six minutes of wages pro-rated from the daily rate of \$56.68. On the other hand, the Organization urges us to award eight hours of pay because the amount of damages is determined by Rule 41. Under prior settlements, on this property, the union argues there is support for damages greater than the six minutes paid by the Carrier.

Rule 41 of the applicable collective bargaining contract states:

"No employe other than those covered by this Agreement and Train Dispatchers will be permitted to handle train orders at telegraph or telephone offices where an employe covered by this Agreement is employed and is available or can be promptly located, except in an emergency, in which case the employe covered by this Agreement will be paid for the call."

The clear and unambiguous language of Rule 41, and not Rule 1, controls the instant controversy. Claimant was available to handle the train move and he, indeed, expressly asked the Yardmaster if there were any other train moves before leaving his post. Rule 41 also provides for a call payment when the Carrier violates the rule. However, claimant is not entitled to eight hours of pay. A review of the historical practice on this property for settling similar disputes discloses that the proper measure of damages is three hours of pay pro-rated from the daily rate. Therefore, claimant shall be paid three hours of pay pro-rated from the \$56.58 daily rate less the six minutes of pay which he previously received from the Carrier.

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 violated.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

