

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42333
Docket No. MS-41745
16-3-NRAB-00003-110408

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(J. S. Miles, Jr.

PARTIES TO DISPUTE: (

(CSXT Transportation, Inc.

STATEMENT OF CLAIM:

- “1. Claiming 7 days overtime pay at the rate of Savannah, Ga. General Clerk’s position 4J10-173, currently \$196.40 per straight time day, account the carrier violated Rules 12, as well as others, of the SCL/TCU clerical collective bargaining agreement, when on the dates of October 5, 12, 19, 26, November 2, 9, and 16, 2009, all Mondays, the carrier allowed untrained and unqualified employees, either W. A. Johnson or A. B. Colson, to protect the Monday rest days of employee J. S. Miles, Jr.
2. The carrier shall now be required to pay claimant J. S. Miles, Jr., ID No. XXXXXX, 7 days pay at the overtime rate of \$294.60 per day for the dates referenced above, totaling \$2,062.20, for the above mentioned violations.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Board notes that the instant dispute is identical to the dispute decided by the Board in Third Division Award 41092, with the only difference being the dates of claim and the additional reference to employee W. A. Johnson. Although the Board dismissed that claim on the grounds that the Petitioner had filed his claim untimely, it also opined that the claim, had it been timely filed, would have been dismissed on the merits. For the same reasons set forth in Award 41092, the Board finds that the Petitioner failed to satisfy his burden of proof that the Carrier was in violation of the Agreement. For this reason, the instant claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of July 2016.