

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

**PARTIES TO DISPUTE:**

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

**POTOMAC YARD (of the) RICHMOND, FREDERICKSBURG  
AND POTOMAC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks Agreement, dated October 16th, 1944.

(1) When on July 6, 1950, the carrier failed to assign extra clerk T. H. Johnson, who stood first out on the extra Board for service on this date for the 7:00 A. M. to 3:00 P. M., shift.

(2) That the carrier (Potomac Yard of the Richmond, Fredericksburg and Potomac Railroad Company) now be required to compensate extra clerk T. H. Johnson, one day's pay at the rate of the position which he was denied the right to work in accord with the rules of the agreement at the rate of \$13.06 per day.

**EMPLOYES' STATEMENT OF FACTS:** There exist at Potomac Yard of the Richmond, Fredericksburg and Potomac Railroad Company an extra Board, which is covered by Rule 6 of the Agreement signed October 16th, 1944.

On July 6, 1950, extra clerk T. H. Johnson stood first out on this extra board for service on the 7:00 A. M. to 3:00 P. M. shift. His position on the extra board was indicated by a wooden plug with his name on it inserted in a slot on this extra board and in this case, through some unknown error his plug was dropped to the bottom of the extra board, causing him to lose the entire day of July 6th, 1950 and also causing the entire extra list to run around him, his next period of duty was 3:00 P. M. to 11:00 P. M. July 7, 1950.

On July 7, 1950, extra Clerk Johnson filed a time claim account of not being allowed to work his proper turn on the extra list, and on July 27, 1950, Mr. Shumate, Superintendent declined this claim, see Employees' Exhibit "A".

On August 5, 1950, the Local Chairman Mr. J. G. Pennazoli appealed this decision and called on Mr. Shumate the Superintendent to discuss this claim, and on August 16, 1950, he declined to allow the claim, see Employees' Exhibit "B".

that his rights were satisfied in every respect, leaving no valid basis for a claim and it should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In respect to the facts that on July 6, 1950, extra Clerk Johnson stood first on the extra board, his plug was mistakenly dropped to the bottom of the board, and he thereby lost his proper place thereon, so that he worked July 3, 4, 7, 8, 9 that week instead of July 3, 4, 6, 7, 8, thereby losing work on July 6, there is no dispute between the parties.

The Carrier admits, in effect, a technical violation of Rule 6(a) and (b) of the Agreement but asks that the claim be denied because of complete lack of intent to violate and because Johnson lost no time or pay during the week. The Organization contends that (1) the violation, whether willful or not, must not be permitted to go unnoticed; and (2) if he had not taken a regularly assigned position in the next week, Johnson would have suffered loss in later weeks, for his original position on the extra board was not restored. Furthermore he had to work on Sunday, July 9, to make up for the loss of Thursday, July 6—a result undoubtedly not to his liking.

Whether the Carrier should be compelled to pay a day's wages for time not worked and whether Johnson actually suffered or might be expected later to suffer inconvenience and pecuniary loss from the mistake that was made are questions of equity that, as this Board has frequently held, must yield to the question of whether or not the applicable provisions of the agreement were violated. A technical violation having occurred, we feel bound so to rule.

There remains the issue as to whether, in the light of the circumstances of this case and of the intent of the relevant provisions of the agreement, the Carrier should be required to pay the claimed day's wages to the Employee. We think that we must so rule. If violations go unpunished, there may be insufficient incentive to avoid repetitions thereof.

It may be objected that our ruling here will open the way for abuse and sharp practice; that is, employes or others may be led to "play loose" with the mechanism of extra board assignment in order to obtain pay for work not performed. We think that management can avoid such a result without difficulty.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Carrier inadvertently committed a technical violation of the agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 28th day of July, 1952.