

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster F. M. Pugh be paid 4 hours at Yardmaster rate in addition to the 8 hours pay already allowed for March 13, 1973 account being denied the opportunity to perform rest days service.

OPINION OF BOARD: On March 13, 1973 Carrier used an extra yardmaster to fill a vacancy and paid him at the punitive rate account he was working on his sixth day. The Organization contends that claimant, a regular yardmaster who was off on his rest day, should have been used to fill the vacancy. Carrier concedes that claimant should have been used to fill the vacancy, but maintains that the proper measure of damages account not being used is compensation at the prorata rate.

We cannot agree with Carrier's contention. We believe the proper measure of damages in claims of this nature is the amount claimant would have received had Carrier not violated the Agreement. If claimant had been properly used to fill the vacancy in question he would have been paid at the punitive rate and this is the proper measure of damages.

FINDINGS:

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.


The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1974.