

Award No. 4973

Docket No. 4833

2-PULL-EW-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE. CLAIM OF EMPLOYES:

1. The Pullman Company violated Rules 23 and 42 of the current agreement when they failed to bulletin a position known to be of more than ten (10) calendar days duration.

2. The Foreman also violated Rule 46 when he allowed Electrician R. Quinn to displace Electrician O. B. Bays as the position held by Electrician R. Quinn had not been disturbed.

3. That accordingly, the Pullman Company, be ordered to compensate both Electricians Quinn and Bays at the rate specified under Rule 31 of all time worked outside of their regular bulletined hours.

EMPLOYEES' STATEMENT OF FACTS: Electrician O. B. Bays, hereinafter referred to as the claimant was employed by the Pullman Company, hereinafter referred to as the carrier, as an electrician at Washington D. C. on January 15, 1954 and resigned on January 17, 1957. Electrician Bays was next employed by the carrier at Baltimore, Maryland, on May 22, 1958. He was eventually furloughed at Baltimore but again worked at Washington D. C. where he was again furloughed. Having maintained his employe relationship, both at Baltimore and Washington, he was, on February 6, 1964 recalled to work at Baltimore, Md., where he was assigned to a vacant position with Saturday and Sunday as relief days.

POSITION OF EMPLOYES: It is submitted that when the foreman assigned Electrician Bays to this vacant position it became his regular assigned position until such a time that it would be bulletined and awarded to a senior employe bidding on it, or if displaced by a senior employe whose position was disturbed. Rule 23 of the controlling agreement captioned "Bulletining Working Hours." provides in part:

its claim to the items which were originally protested when the claim was first filed on the property. The organization explains the variation between the claim on the property and the claim filed with the Board on the basis that when the claim was filed on the property, the work had not been completed. However, the carrier points out that as late as April 6, 1950, the general chairman in handling the claim on appeal with the personnel officer limited the claim to the items included in the first claim filed on the property."

CONCLUSION

The Company has shown in this submission that Claimants Quinn and Bays received all of the pay to which they were entitled during the period February 6 to March 16, 1964, and that neither Claimant was deprived of his rights under the terms of the Agreement. The Company has shown that Rule 42 was in effect fully complied with in that Electrician Quinn requested that he be awarded the vacancy in position No. 2, and his request was granted. Further, the Company has shown that Rule 42 contains no provision for the assessment of a penalty in the event the mechanical posting of a bulletin covering a vacancy is not performed. Finally, the company has shown that Electrician Bays, who possessed no seniority on the Baltimore Electricians' Roster was correctly assigned to a vacancy in position No. 3.

Since there is no basis in any rule of the agreement for additional money payments to Electricians Quinn and Bays, the claim in their behalf is without merit and should be denied by this Board.

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

The carrier or carriers and the employe or employes 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.

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

The claim as made and handled on the property was that the Carrier violated Rule 42 by failing to bulletin a vacancy known to be of more than ten calendar days' duration, and Rule 46 by permitting Claimant Quinn to fill the temporary position.

The Carrier had three electricians in the Baltimore District; they were regularly assigned to Positions Nos. 1, 2 and 3, all working the same hours. Saturday and Sunday were the rest days of Positions 1 and 2, occupied by Bryant and Ruhl; Monday and Tuesday were the rest days for Position 3, occupied by Claimant Quinn.

Ruhl became ill and the Carrier, instead of bulletining the Position No. 2 vacancy, permitted it to be occupied by Claimant Quinn (who requested it because of its rest days), and assigned Claimant Bays, (on furlough from the Washington District) to occupy Quinn's regular assignment, Position No. 3, while Quinn was filling the vacancy in Position No. 2. Upon Ruhl's return he resumed his regular assignment, Position No. 2, and Quinn returned to his regular Position No. 3.

The Carrier concedes what it calls the "technical violation" of Rule 42 (thus conceding that it was known to be of more than ten days duration); but it contends that as Bryant, Ruhl and Claimant Quinn were the only electricians in the district, and Claimant Bays had no seniority there, Quinn was entitled to fill the temporary vacancy, so that the result was the same, and no one's rights were affected. It says that "In effect, Electrician Quinn bid on Position No. 2, and he was assigned the position;" and that Bays, who had no seniority in the Baltimore District, was assigned to fill Position No. 3 during Quinn's absence from it.

There are three flaws in that argument: first; that Claimant Quinn had a regular assignment from which he was not displaced, and therefore was not entitled to bid on the temporary vacancy under Rule 46; second, that the only bona fide vacancy was in Position No. 2 and was caused by Ruhl's illness; and third, that if the vacancy had been bulletined pursuant to Rule 42, Claimant Bays would have been entitled to bid under either Rule 40 (permanent transfer) or Rule 41 (temporary transfer).

Thus it is immaterial whether in the first instance Bays was called to fill the bona fide vacancy in Position No. 2 and Quinn was allowed to displace him, as the Employees contend; or whether in the first instance Quinn was allowed to fill the temporary vacancy in Position No. 2, thereby temporarily vacating Position No. 3, which Bays was then called to fill, as asserted by the Carrier. It would seem true also, under the latter alternative, that there were two violations of Rule 42; for two vacancies were filled without bulletins: first, Position No. 2, and second, Position No. 3.

Clearly, and admittedly, Rule 42 was violated. Strictly speaking, it was not a violation of Rule 46 to give Claimant Quinn a preferential right to which the rule did not entitle him, but it was a violation of Claimant Bays' preferential rights under Rule 46. The alleged violation of Rule 23 is not properly before us, not having been asserted on the property.

Since Claimant Bays was required to work on Saturday and Sunday, the regular rest days of Position No. 2, the temporary vacancy of which caused his transfer to the Baltimore Agency, he is entitled to pay at the time and one-half rate for those days, in accordance with Rule 31.

Since, however, at his own request, Claimant Quinn was allowed to vacate his Position No. 3 assignment temporarily and to occupy Position No. 2 temporarily during the absence of its regular occupant solely for the purpose of enjoying the rest days of the latter, he is not entitled to overtime pay for working on the rest days of Position No. 3, which he had temporarily vacated.

Claim 1 must be sustained as to Rule 42, but denied as to Rule 23, which was not raised on the property. Claim 2 must be denied, as we find no actual violation of Rule 46. Claim 3 must be sustained as to Claimant Bays, but denied as to Claimant Quinn.

AWARD

Claim sustained to the extent stated in the final paragraph of the Findings, but otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1966.

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