

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12875
Docket No. 12631
95-2-92-2-184

The Second Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(Burlington Northern Railroad

STATEMENT OF CLAIM:

- "1. That in violation of Appendix C of the controlling Agreement Mechanical Department Electrician Sam Gillham of Springfield, Missouri was deprived of compensation to which he was entitled on July 16, 1990.
2. That accordingly, the Burlington Northern Railroad should be instructed to compensate Electrician Sam Gillham in the amount of 8 hours at the punitive rate. Mr. Gillham was the first man out on the overtime board and available to perform the service which was denied him."

FINDINGS:

The Second 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 waived right of appearance of hearing thereon.

At issue in this case is the question of whether Carrier is required to call an employee on his rest day to work overtime (filling a position whose incumbent is on vacation) before allowing a scheduled employee to fill the vacancy, after blanking his position. Crane Operator Ed Shaw was on vacation July 16, 1990. Shaw's job was assigned to Electrician Jay Luce, upon Mr. Luce's request. This claim is raised on behalf of Electrician Sam Gillham, who was on his rest day at the time. Mr. Luce ultimately provided relief on four additional days of Mr. Shaw's vacation.

The Organization cites a violation of Section 10(b) of the Schedule Agreement:

"(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five percent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

Carrier alleges that Mr. Luce had the right to perform the work under Rule 13(a):

"(a) A vacancy of thirty (30) calendar days or less duration in an established position (as a result of sickness, injuries, transfers and leaves of absence) or a new position of thirty (30) calendar days or less duration or the position of a vacationing employee may be filled without bulletining by transferring the senior qualified employee assigned in the facility where such vacancy or position develops requesting same. In the absence of any such employee, the junior qualified employee in the facility may be assigned.

The assignment of an employee to fill the temporary vacancy shall be considered temporary until such time as the regular incumbent on leave or vacation returns. If more than 30 days, it will be bulletined as a temporary vacancy and the bulletin will indicate the temporary vacancy is due to one of the reasons listed in the above paragraph. When the regular incumbent returns, he will have the option of exercising seniority on any position bulletined during his absence or returning to the position he occupied prior to his absence. However, if he was displaced by a senior employee under the provisions of Rule 22(g) during his absence, he will not be permitted to return to his former position but may displace a junior employee upon his return.

If it is necessary to call furloughed employees other than those making requests under Rule 23 for temporary vacancies, it is understood that inability to accept the proffered employment shall not constitute a forfeiture of Seniority rights. However, in the restoration of forces, or increase in forces, the provisions of Rule 22(d) shall govern, and shall not be construed as a 'temporary vacancy' irrespective of the length of time additional forces may be required."

Carrier points out that Mr. Luce was the senior qualified employee requesting to relieve the vacationing employee, Mr. Shaw.

This Board has reviewed the entire record of this case and does not read Section 10(b) to mean that Claimant was entitled to the relief work in question on an overtime basis before it was given to Mr. Luce. The work of vacationing employee Shaw was not given to an employee who was also required to perform his own assignment. Thus, the issue of whether someone is performing 25 percent of the vacationing employee's workload does not arise. At the same time, this rule does not mandate the utilization of an employee on his rest day for short-term work before assigning someone to the job who has requested the position. Rule 13(a) clearly states that "...the position of a vacationing employee may be filled without bulletining by transferring the senior qualified employee assigned in the facility where such vacancy or position develops requesting same." This rule does not specify that the work must be given to the senior qualified employee requesting same on an overtime basis.

Based upon all of the facts of the case, this claim must be denied.

AWARD

Claim denied.

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O R D E R

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 Second Division

Dated at Chicago, Illinois, this 17th day of April 1995.