

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Houston Belt and Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railway Company violated Rule 14(a) and Note when they filled job vacancy of Carman J. Tymniak February 27, 1983 through March 27, 1983 without posting job as per rule cited.

2. That the Houston Belt and Terminal Railway Company be ordered to compensate the following Carmen:

G. Weiner	February 27, 1983	12 hours (twelve)
G. Weiner	March 6, 1983	12 hours
G. Weiner	March 13, 1983	12 hours
G. Weiner	March 20, 1983	12 hours
G. Weiner	March 27, 1983	12 hours
J. Bouldin	February 28, 1983	12 hours (twelve)
J. Bouldin	March 7, 1983	12 hours
J. Bouldin	March 14, 1983	12 hours
J. Bouldin	March 21, 1983	12 hours
R. Crowley	March 3, 1983	12 hours (twelve)
R. Crowley	March 10, 1983	12 hours
R. Crowley	March 17, 1983	12 hours
R. Crowley	March 24, 1983	12 hours
M. Cotton	March 4, 1983	12 hours (twelve)
M. Cotton	March 11, 1983	12 hours
M. Cotton	March 18, 1983	12 hours
M. Cotton	March 25, 1983	12 hours
T. Sybill	March 5, 1983	12 hours (twelve)
T. Sybill	March 12, 1983	12 hours
T. Sybill	March 19, 1983	12 hours
T. Sybill	March 26, 1983	12 hours

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 employees 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 at hearing thereon.

On February 27, 1983, Carman J. Tymniak was injured at the Carrier's Houston, Texas facility. Carrier Officers discussed the injury with him and his physician to determine how long Tymniak would be out of service due to the injury, whereupon they filled the vacancy with the youngest Carman available.

On March 30, 1983, the Carrier posted as a temporary assignment the vacancy created by Tymniak's injury, and the job was awarded on April 5, 1983, to the only bidder. Tymniak returned to work on April 14, 1983.

The Organization claims that Tymniak's position should have been bulletined the day of his injury, since it was obvious immediately that he would not return to work for months. Also, the Organization notes that the five Claimants were on the Overtime Board and available to fill Tymniak's position on the dates of their Claims (February 27 through March 27, 1983). Thus, the Organization argues, by failing to post the job immediately the Carrier violated Rule 14. Rule 14 is quoted in pertinent part below:

"FILLING VACANCIES OR NEW POSITIONS

(a) When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial, (not to exceed fifteen (15) days to be considered trial) be given preference in filling such new jobs or any vacancies that may be desirable to them. All permanent vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the Local Chairman.

NOTE: Temporary vacancies of fifteen (15) days or more will be bulletined. Employees filling such temporary vacancies will return to their former positions at the expiration of the temporary position.

The Carrier argues that the Claim was improperly filed. First, it notes that some of the Claimants were either on duty on dates covered in the Claim, or were otherwise unavailable for service. Second, the Claim covers twenty-one days, and there is no contractual requirement to bulletin the position during the first fifteen days. Thus, only six days of the Claim could possibly be valid. Third, the Claim was filed for twelve hours on each of the twenty-one days, reflecting eight hours at the punitive (1 1/2) rate. The punitive rate is not applicable for work not performed.

With regard to the merits, the Carrier asserts that it was not in a position to know what would be the duration of Tymniak's absence. Thus, after the vacancy had existed for thirty days the Carrier decided to bulletin it as a temporary vacancy. Moreover, none of the Claimants bid on the position.

With regard to the merits of the case, the Board concludes that the Claim is valid in part. It is clear from Rule 14 that the temporary vacancy created by Tymniak's absence should have been posted after the fifteenth day of its existence, regardless of whether the duration of his temporary absence was known by the Carrier. However, we agree with the Carrier that it is not responsible for posting the vacancy during the first fifteen days of the vacancy's existence. And, since those fifteen days are included in the Claim, they should be disallowed.

Moreover, we do not feel it is appropriate to compensate any of the Claimants for the remaining six days claimed if indeed they were not available for filling the vacancy. Unfortunately, the record does not contain complete evidence as to their respective availability on those days.

Thus, we conclude that the Carrier is financially obligated for reimbursement of six days at the straight time rate (48 hours total). The Carrier and Organization are hereby directed to distribute such funds among the Claimants equitably, ensuring that no single Claimant is reimbursed for work on any of the last six days covered by the Claim if indeed that Claimant were unavailable for work on that day.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1986.