Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13253
Docket No. 13238
98-2-97-2-6

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
(
(CSX Transportation, Inc. (former Baltimore &
(Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Carrier violated the intent of Rule 24½ whenever an employee possessing seniority only at Eastern Region Points 29 & 30 performed duties at Eastern Region Point 32 in lieu of Claimant.

2. That the Carrier compensate Claimant the amount of one hundred twelve (112) hours at the Carman rate of pay in effect during the period claimed, and the amount of thirty four (34) hours at the Carman time and one-half rate of pay in effect during the period claimed."

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 were given due notice of hearing thereon.

Claimant was a furloughed Carman with seniority rights at Benwood, West Virginia. Rule 24½ provides a means by which furloughed Carmen can request to work vacancies by advising the appropriate Supervisor in writing of their intent. Claimant filed such an intent in October to be considered for a temporary vacancy at Benwood. It was common knowledge that the regularly assigned Carman at Benwood would be on vacation for four weeks commencing December 4, 1995.

Claimant did not commence working the Benwood vacancy until December 18, 1995 because inasmuch as he had been off in excess of 90 days prior to the starting date of the vacancy, he was required by the Carrier to undergo a return-to-work physical and to undergo some training to bring him up to speed as to the latest policies, etc.

Claimant was notified to take the physical on December 6, was medically qualified on December 13, and was assigned the Benwood vacancy on December 18. The claim before the Board requests pay for all time lost because Claimant was not assigned the vacancy the day it commenced on December 4, 1995.

The Board, after reviewing the on-property handling and the Carrier's Submission finds that it contains new arguments which were not raised on the property. Because Circular No. 1 of the Board precludes us from considering new material, our Findings are based solely upon that which was contained in the on-property handling.

Additionally, whatever purpose Carrier intended to convey to the Board by presenting near blank, illegible documents identified as its Exhibits B-1, B-2, C-3, C-4 and C-5 is lost. If the Board cannot read them, what good are they?

Regarding the question before the Board, it is evident that the Claimant made a proper request for the temporary vacancy at Benwood in October 1995. The Carrier advanced only two arguments as to why it did not utilize Claimant until December 18, 1995.

First, it is Carrier policy to medically recertify any employee who is off in excess of 90 days, and to advise the recalled employee of any new policies which may have been implemented while off. Second, it was Carrier's intent "to determine if the workload warrants the extra cost incurred to fill [the] vacancy."

The Board renders no opinion as to the Carrier's policy of requiring recertification of employees off in excess of 90 days, but sees no reason in this record why the Carrier waited until December 6 to contact the Claimant to take his physical. Such could have been done prior to the start of the vacancy.

The Carrier's workload argument is not valid. In our opinion, such determination could and should have been made prior to the start of the vacancy.

Under the circumstances, the claim will be sustained for the period of December 11 through December 16, 1995. Claimant was on vacation commencing December 4 for five days. Thus he was not eligible for any time lost before December 11, 1995.

It is further significant to note that although the Organization sought lost holiday pay in addition to the time lost, while handling the dispute on the property, it did not include a request for holiday pay in its Statement of Claim progressed to the Board. Accordingly, holiday pay will not be allowed as the Board has no jurisdiction to go beyond the Statement of Claim presented to it.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of March 1998.