

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis J. Robertson, Referee.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

- (1) That the Carrier violated the agreement by not assigning Crossing Watchman F. Arrabito for overtime service as Crossing Flagman at 18th and Sangamon, Chicago;
- (2) That Crossing Watchman Arrabito be now compensated for eight (8) hours at the punitive rate account of the violation of agreement as stated in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** Frank Arrabito is regularly assigned as Second Trick Crossing Watchman (3:00 P. M. to 11:00 P. M.) at 18th and Sangamon Streets, Chicago, Illinois.

On September 2, 1948, the regular Third Trick Crossing Watchman (11:00 P. M. to 7:00 A. M.) was not available for his assignment.

The Carrier assigned a Section Laborer, who held no seniority rights in the Crossing Watchman's class to protect the Third Trick assignment on September 2, 1948.

Claim in behalf of Crossing Watchman Arrabito, who was available to perform the required service, was filed by the Employees and claim was declined by the Carrier.

The agreement in effect between the two parties to this dispute, dated December 1, 1946, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rule 2 of the effective agreement lists the respective groups of employees that are covered in the scope of the agreement:

**"SUB-DEPARTMENTS**

The Sub-departments of the Maintenance of Way and Structures Department are as follows:

- a. Track
- b. Bridge and Building

**SUMMARY:**

The Carrier believes that the evidence herein and herewith submitted proves conclusively that:

1. The aggrieved employe, having of his own volition bid for a position which was assigned to him, had no right to other service which was not a part of his assignment. See Rule 25.

2. The theory expounded in Item 1 hereof is clearly supported by that part of the Findings in Third Division Award 4823, which reads:

"But it does not assign Sunday work to the occupants of the positions assigned six days with a Sunday rest day. We feel obliged to again point out that the motivating reason for the rest day rule was to afford one day of rest each week to employes. A penalty rate for working an employe on his rest day was established to coerce compliance with the rule. The intent of this rule and the objective sought by it should be carried out whenever possible. We think the spirit of the rule as well as the letter of it, requires the Carrier to use extra employes in preference to the occupants of the regularly assigned positions under the Agreement for rest day work when they are available, and thereby afford the occupants of six day positions the day of rest contemplated by the Agreement."

3. In the handling of this controversy on the property, the only rule cited by Petitioner is Rule 40(a) of the currently effective collective agreement to which the litigants in this proceeding are the parties. Having so handled the controversy on the property, Section 3, First (i), of the amended Railway Labor Act requires that it be so handled before this tribunal.

4. Having thus circumscribed Petitioner's approach to the problem, Carrier again directs attention to the incontrovertible fact that Rule 40(a), by its own language, applies only to gangs, such as Section Gangs, Bridge and Building Gangs, etc., and does not apply to incumbents of individual positions such as the one here involved.

In the light of all of the circumstances, there would seem to be no alternative other than to deny the claim in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant is a crossing flagman regularly assigned at 18th and Sangamon Streets, Chicago, Illinois, hours 3 P.M. to 11 P.M. On September 2, 1948, during the illness of the incumbent of the third trick crossing flagman position at this crossing a section laborer was assigned to protect that trick. For such service he was paid at the section laborer's rate. Employes assert that Claimant should have been doubled over to protect the assignment. They cite the seniority rule and Rule 40 (a) in support of their contention. Rule 40 (a) reads as follows:

"Senior available qualified employes in the respective gangs will be given preference to work when overtime service is required."

Carrier contends (1) Rule 40 (a) is not applicable because crossing watchmen are not assigned to gangs, (2) this was not overtime service but merely the filling of a vacancy for which the proper rate was paid under the preservation of rate rule and (3) that the vacancy was properly filled under Rule 25 of the Agreement which reads as follows:

"A new position or vacancy of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining, except that available employes holding seniority in the grade in which the vacancy occurs who are not assigned in such grade in the seniority district will be given preference in seniority order."

Under Rule 2 of the applicable Agreement setting forth the sub-departments of the Maintenance of Way and Structures Department, crossing watchmen, gatemen and flagmen are in different groups and grades in the track sub-department than section laborers. Under the seniority rule (Rule 5) seniority rights of all employees are confined to the group of the sub-department in which employed. Under these provisions of the Agreement, in the absence of an emergency, the assignment of the section laborer to protect the third track would be an invasion of the seniority limits of the crossing watchmen group, unless such assignment be considered as permissible under Rule 25 as contended by Carrier.

Clearly, Rule 25 gives the Carrier the right to fill new positions or vacancies on existing positions which are of less than 30 days without bulletining. However, even though there may be no available employees holding seniority in the grade in which the vacancy occurs who are not assigned in that grade in the seniority district, that factor does not remove the work of the position temporarily vacated by the incumbent from the operation of the seniority of employees comprising the seniority group. The work is reserved to the group including such new employees as may necessarily be added thereto in conformity with the provisions of the Agreement relating to new hirings. Where a vacancy of thirty days or less occurs on a position in the group and there are no unassigned employees holding seniority in the group available and Carrier has not seen fit to add to the group by the hiring of a new employee to fill the vacancy, the work of the position should be assigned to the senior available regularly assigned employee in the group, even though overtime may be required in its performance. It follows that the assignment of the section laborer to the work here involved was in violation of the Agreement. The claim will be sustained at the pro rata rate (Award 4244).

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

#### AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 9th day of April, 1951.