Award No. 7330
Docket No. CL-7388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that:

(a) The Carrier violated the National Vacation Agreement and the Clerk's Agreement at Wiggins No. 2 Yard Office on August 16, 18, 19, 20, and 22 and on September 19, 1954 when it failed to fill Yard Clerk C. E. Jessup's position during the dates he was relieving other clerks who were on vacation on those dates. Also,

(b) On August 21, when the Carrier failed to fill the position of Yard Clerk Fayollat while he was on vacation. Also,

(c) Claim that Yard Clerks H. L. Lueker, C. L. Shadley, J. M. Sullivan, G. B. Stark, E. J. McAllenan, and V. C. Johnston be reimbursed the exact amount they would have earned had they been called to fill Yard Clerk Jessup and Fayollat's positions.

EMPLOYES' STATEMENT OF FACTS: On August 16, 1954, Yard Clerk Hennessy was on vacation and C. E. Jessup, regular assigned Clerk on the position known as CBandQ Connection Clerk, was moved from his position to fill Hennessy's position and Jessup's position was blanked. Claim for this date is filed in behalf of H. L. Lueker.

On August 18, 1954, Yard Clerk Hennessy was on vacation and Yard Clerk J. M. Sullivan, regular assigned Clerk on the position known as Westbound Train Clerk was moved from his position to fill Hennessy's position and Yard Clerk James Hanna, regular assigned Clerk on the position known as CBandQ Connection Clerk was moved into Sullivan's position and Hanna's position was blanked. Claim for this date is filed in behalf of C. L. Shadley.

On August 19, 1954, Yard Clerk Hennessy was on vacation and Yard Clerk G. B. Stark, regular assigned Clerk on the position known as CBandQ Connection Clerk was moved from his position to fill Hennessy's position and Stark's position was blanked. Claim for this date is filed in behalf of J. M. Sullivan.

"The referee believes that the rules agreements as they presently exist would not permit the carriers to blank C's position. He is frank to say that he feels that an adjustment of the rules ought to be made to permit the blanking of C's position under such circumstances, but the referee is without jurisdiction or authority to make such an adjustment in the rules for the parties. It seems to the referee that if, under the illustration, it is proper for the carriers to let A's job go unfilled, and the employes admit that such action would be proper, then there is no really good reason for not allowing them to blank C's job if B is moved up to A's job and C is moved up to B's job and C's job does not need to be filled. The only reason advanced by the employes for their position is that existing working rules prohibit the blanking of C's job. However, the referee cannot escape the conclusion that the application of such a rule to the illustration amounts in fact to a 'make-work' proposition, and is therefore contrary to the spirit and intent of Article 6 of the vacation agreement. However, in the absence of a definite adjustment, in accordance with Article 13 of the agreement, of the working rules on blanking jobs, such existing working rules would prevail in keeping with the understanding that the vacation agreement must be administered in a manner consistent with the existing working rules agreements."

Now that the schedule rules no longer prohibit blanking of positions, there is no valid basis for the claims.

In the claim shown in part (b), on August 21 Clerk Fayollat was on vacation and his position was blanked that day. The work of his position was performed by the other four clerks on duty. Neither Article 6 nor the interpretation thereto requires that the carrier must "provide vacation relief workers" in every instance. Both provide that if the blanking of a position does not burden the employes remaining on the job or the vacationing employe after he returns the carrier is not required to provide a relief worker. Referee Morse held that the carriers' interpretation of the word "burden," meaning "* * * an overtaxing of employes, i. e., that it should be interpreted in accordance with the usual meaning of the word as applied in common usage and as found in the standard dictionary," was correct. Traffic had fallen off twenty-one per cent compared with like period in the previous year. No one was overtaxed or burdened in keeping up the work of all positions and none was left over at the close of the shift.

As we have shown, there is no sound basis for the claims from any standpoint and they should be denied. However, should an award adverse to the carrier's position be issued, claims should be allowed at the pro rata rate as the Board has established by a long line of awards that the proper rate for time not worked is pro rata.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employes and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Both the statement of claim and facts relating thereto are clearly set forth in the submission. There is in evidence a Rules' Agreement bearing effective date of January 1, 1950; also the National Vacation Agreement of December 17, 1941. The dispute involves an interpretation of both Agreements as applied to facts of record, in accordance with the respective theories of the parties.

The basic question to be decided is whether or not Carrier has violated an obligation, imposed by contract, in connection with procedures invoked and employed by it in re-arranging its forces to fill a vacancy caused by an employe being on vacation.

The charge that the Agreements have been violated and the denial make up the general issue to be decided.

Employes see in the procedures that provoke the dispute an undue burden which they contend has been placed on occupants of regularly assigned positions, amounting to an attempt to absorb overtime by the process of blanking certain positions during regular hours.

Carrier sees in the dispute an attempt on the part of the employes to use the National Vacation Agreement as a "make work" device contrary to the spirit and intent of said Agreement. Further, and with equal conviction, Carrier believes its action in re-arranging its forces for vacation relief is entirely proper now that the Rules Schedule does not prohibit the blanking of positions.

There is much to be said for Carrier's position that the National Vacation Agreement, as interpreted, allows for some re-arrangement of forces. Neither can fault be found with the general proposition that the Vacation Agreement is not to serve as a "make work" device.

The expression, "vacation relief workers" is defined in general terms by the National Vacation Agreement to mean all persons who fill the positions of vacationing employes. That definition, as interpreted, takes in regular employes who may be called upon to move from their job to the vacationer's job for the period of time during which the employe is on vacation.

A careful reading of the record out of which came the foregoing interpretation conclusively proves that, the needs of the service permitting, and rules not prohibiting, Carrier may utilize the services of regular employes for vacation relief even to the extent of moving a regular employe from his job to the vacationer's job for the period of time during which the employe is on vacation.

It is another matter, though, where Carrier is using the same employe on two different assignments at the same time. Under those circumstances, Carrier is only permitted to distribute the work of a vacationing employe to two or more employes with common seniority under a given rules agreement of a particular class or craft, provided such distribution is not in excess of 25% of the work load of a given vacationing employe, unless a larger distribution of this work load is agreed to by the representatives of employes.

It strikes us as singularly strange Carrier was not able to accommodate needs of the service by distributing its work accordingly. Instead it takes heart and finds comfort in another interpretation that it has undertaken to follow.

The real import of that interpretation is to hold that the blanking of positions to provide vacation relief, as was here undertaken, is subject to local rules and practices. The Referee whose interpretation is relied upon expresss himself in the record in a way that leaves no doubt about what was intended. He was having difficulty with logic that would allow the position of a vacationing employe to be blanked, as agreed, without that same right being extended down through the ranks. He then deplores the fact that he cannot enter an interpretation that would be in keeping with the spirit and intent of Article 6, for the reason that language of the same Agreement provides, " * * * the vacation agreement must be administered in a manner consistent with the existing working rules agreement."

The existing working rules agreement on the lines of this Carrier now permits the blanking of positions when that right did not formerly exist, but, confronting the Carrier, in the exercise of that right, is Rule 41, on which the employes partly rely in this docket.

Intellectual honesty requires of the present Referee that he say the Awards of this Board, in his opinion, place a broader and more liberal in-

terpretation on rules like Rule 41 than the language indicates was originally intended, but a review of those Awards definitely shows, in many instances, the need to do so account the Carrier was found to be spreading work among a sufficient number of positions as would permit the blanking of a position, which, if worked, as it would have been except for re-arranging the work, would have run into overtime. There is some evidence in this docket to show such was the purpose to be served by blanking the positions in question.

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 Employes involved in this dispute are respectively carrier and employes 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 the Agreement was violated.

AWARD

Claims sustained at pro rata rates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of May, 1956.