

Award No. 10421
Docket No. MW-9728

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

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 that:

(1) The Carrier violated the Agreement when it called and used a furloughed section laborer to perform crossing watchman's work on the third shift at Iowa Avenue, Ottumwa on March 2, 8, 9, 15, 16, 29, 30, May 17, 18, and 24, 1956 instead of calling and using an employe holding seniority as a crossing watchman.

(2) Crossing Watchman G. E. Rush be allowed eight hours' pay at his time and one-half rate for each of the following days, March 8, 15, 29, May 17 and 24, 1956 because of the violation referred to in Part (1) of this claim.

(3) "Crossing Watchman T. Scully be allowed eight hours' pay at time and one-half rate for each of the following days, March 2, 9, 16, 30, and May 18, 1956 because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant G. E. Rush was regularly assigned as second trick Crossing Watchman, 3:00 P. M. to 11:00 P. M., Wednesday through Sunday, at Iowa Avenue, Ottumwa, Iowa, with Mondays and Tuesdays as designated rest days. He worked the regularly assigned hours of his position on Thursdays, March 8, 15, 29, May 17, and 24, 1956.

Claimant T. Scully was regularly assigned as second trick Crossing Watchman, 3:00 P. M. to 11:00 P. M., Thursday through Monday, at Vine Street, Ottumwa, with Tuesdays and Wednesdays as designated rest days. Mr. Scully worked the regularly assigned hours of his position on Fridays, March 2, 9, 16, 30 and May 18, 1956.

On March 2, 8, 9, 15, 16, 29, 30, May 17, 18 and 24, 1956 the regularly assigned third trick Crossing Watchman (11:00 P. M. to 7:00 A. M.)

The claimants in this case are "those on other five day positions — each one is regularly assigned to a five day position of his own. The temporary vacancies occurred on other five day positions, regularly assigned to other employees. Consistency requires that the Board also proclaim in this case that those on other five day positions, such as claimants, have no right to claim an assigned day or days of any other position.

In summary, Carrier respectfully submits that:

1. The instant claim is premised upon a non-existent rule — a rule which Carrier rejected in the exercise of the option agreed upon by the parties to the August 21, 1954 Agreement.
2. The temporary vacancy in each case was filled in conformity with the provisions of Rule 25, and the agreement shown in Carrier's Exhibits Nos. 3(b) and 3(c).
3. Award 1774 clearly and correctly denied an identical claim under the same rule.
4. Award 7328 sets forth the principle that a regularly assigned employee has no right to work on any other position.

For the reasons briefly outlined herein, the claim must be denied in its entirety.

The Carrier affirmatively states that all data herewith presented have previously been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are regularly assigned Crossing Watchmen. G. E. Rush was assigned at Iowa Avenue Crossing, Ottumwa, Iowa, and he regularly worked the second trick from 3:00 P.M. to 11:00 P. M. Wednesday through Sunday. T. Scully was assigned at Vine Street Crossing in the same city and he worked the second trick from 3:00 P. M. to 11:00 P. M. Thursday through Monday. They claim pay at time and one half their respective rates of pay for 10 days when the regular Crossing Watchman assigned to the third trick (11:00 P. M. to 7:00 A. M.) were not available. Each of the temporary vacancies were filled by a furloughed Section Laborer.

The Organization contends that the Carrier had no right to cross over craft lines to make those temporary assignments and relies principally on Rule 25 of the Agreement which reads:

"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 employees 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."

Rule 2 of the Agreement sets out five sub-departments which are each divided into several Groups and some Groups are in turn divided into Grades. Seniority is administered under Rules 2 through 30. Section Gang Laborers are in Grade C of Group 1 and Crossing Watchmen are in Grade A of Group 3.

The Organization has cited several awards by this Board to sustain its position. In Award 4603 (Whiting) the alleged contract violation occurred in May 1946. The contract provisions are not similar to those in the present Agreement. Rule 25, in its present form has been part of the Collective Bargaining Agreement since December 1, 1946. Neither are the facts applicable. Similarly, Award 4653 (Carmody) involved a claim by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees which is not applicable to the issue in this case. Similarly, Award 6949 (Carter) is distinguishable. In that case the Carrier assigned "a clerk to perform the duties of relief pumper on three tag end relief days in addition to his regular assigned position as Clerk. This Board properly said:

"The Claimant being regularly assigned in Group 1 of the Water Service Sub-Department, his seniority rights under Rule 5 (a) are confined to that group as long as his seniority permits him to hold a regular position in that group. His seniority can be exercised on a position in another group only in of force reduction, displacement, voluntarily accepting an assignment of more than 30 days in a lower, or by bidding for bulletined vacancies or new positions under Rule 26. . . ."

It should be noted that the position filled by the Clerk was a permanent position for more than 30 days and Rule 25, which was then in effect, was not involved.

The Organization relies most heavily upon Awards 5311 (Robertson) and 5827 (Douglass). The claim in Award 5311 arose in September, 1948; in Award 5827 the claim arose in June, 1950. In Award 5827 this Board held that the Carrier had no right to assign a B&B Helper to work as a Drawbridge Tender on regular relief days while the same Helper was working a full 40 hour week as a replacement for a regular Drawbridge Tender who was on vacation. The Board held that Rule 25 was not applicable because "this involved a man who was on vacation. We sustained the claim because Rule 40 (a) provides that preference to overtime work be given to employees in the respective gangs. The Helper was working at the overtime rate on those relief days.

In Award 5311 this Board sustained a claim which is based on facts similar to those in this case. There is, however, one controlling difference. We have already noted that the claim in Award 5311 arose in September, 1948. However, the record in the instant case before the Board shows that on September 15, 1954, the Carrier wrote to the General Chairman of the Organization in part as follows:

"In consideration of the understanding had when the 40 hour work week was agreed upon to the that, in so far as Maintenance of Way Employees are concerned, there are no restrictions in connection with the use of furloughed men to perform extra work and to fill temporary vacancies, we feel there is no reason for adoption of Article IV on this property. You may, therefore, accept this letter as Carrier's notice to you that Carrier elects to reject Article IV of the August 21, 1954 Agreement."

On September 22, 1954, the General Chairman replied to the Carrier and after quoting the above paragraph in the Carrier's letter said:

"As long as we are both agreeable to continue our present practice under the 40 hour work week understanding, that is, permitting the use of furloughed Maintenance of Way employes perform extra work or fill temporary vacancies which occur in the Maintenance of Way Department, it is my opinion as it is yours, that there is no need to adopt said Article IV."

It is an acceptable rule of contract interpretation that the meaning and intent of the parties must be gleaned from the entire Agreement. All of the applicable Rules need to be considered to give meaning and intent to Rule 25. Also, any valid ancillary Agreements entered into by the parties must be given equal consideration. The letters of September 15 and September 22, 1954, are valid and must be so considered as part of the entire Agreement between the parties. There is nothing in the record to challenge the authority of the representatives of the Carrier or the Organization to reach such an Agreement. See Awards 3198 (Carter), 6867 (Parker), 6903 (Coffey), 7061 (Carter) and 10239 (Gray).

These letters clearly establish an understanding that "there are no restrictions in connection with the use of furloughed men to perform extra work and to fill temporary vacancies." Rule 25 deals exclusively with temporary vacancies. We conclude that the September 1954 letters clarify and give meaning to that part of Rule 25 which says "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." The Claimants were assigned in their grade. There were no furloughed Crossing Watchmen. White was a furloughed employe who was temporarily assigned to replace a regular employe. The Carrier fully complied with the terms of the Agreement.

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 not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1962.