Award No. 14952
Docket No. CL-14366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5416) that:

1. Carrier violated the National Vacation Agreement and the Clerks' Agreement at Clearing, Illinois when it deprived Laborer A. Stynski of work on his regularly assigned position in contravention of the provisions of the current working agreement, as well as Article 6 of the National Vacation Agreement, when he was required to relieve Relief Employe J. Gierhahn July 31 and August 1, 1962 and Counterman A. Diggs July 9, 16 and 23, 1962, who were on vacation on those dates.

2. Claimant A. Stynski shall now be compensated an additional days' pay, at the rate of his Laborer position, for each of the days involved, namely: July 9, 16, 23, 31 and August 1, 1962, or a total of five (5) days.

EMPLOYES' STATEMENT OF FACTS: Claimant A. Stynski is the incumbent of a Laborer position. His position, among others, is located in the Carrier's Stores Department, with assigned hours of 7:30 A.M. to 4:00 P.M., and is designated by the Carrier as a five day per week assignment under the Forty Hour Week Rules of our Agreement.

Mr. Diggs is a Counterman in the Stores Department. His position is designated by the Carrier as a seven day per week assignment with assigned hours of 7:30 A.M. to 4:00 P.M. Rest days of Tuesday and Wednesday. Mr. Diggs was on vacation July 9 to 29th, inclusive, and resumed his position on July 30, 1962.

Mr. J. Gierhahn is a Relief employe, who regularly relieves Chauffeur Vaughn one day each week, Counterman Diggs two days and works as a laborer on the Scrap Dock two days each week, was on vacation July 30 to August 5, 1962, inclusive, and resumed his position on August 6, 1962.

During the time Mr. Gierhahn was absent on vacation the vacancies occurring on the Chauffeur and Counterman positions had to be filled. The work on the scrap dock was blanked two days each week. One day each

REGULAR WORK WEEK

Rates of Positions Worked

Mondays 2-9-16-23-30	Tuesdays 3-10-17-24.31	Wednesdays 4-11-18-25 August 1	Thursdays 3-12-19-26 August 2	Fridays 6-13-20-27 August 3
(7/2) $18.662	(3) $18.662	(4) $18.662	(5) $19.25	(6) $19.25
(9) 19.25*	(10) 18.662	(11) 18.662	(12) 19.25	(13) 19.25
(16) 19.25*	(17) 18.662	(18) 18.662	(19) 19.25	(20) 19.25
(23) 19.25*	(24) 18.662	(25) 18.662	(26) 19.25	(27) 19.25
(30) 18.662	(31) 19.25*	(8/1) 19.25*	(2) 19.25	(3) 18.662

*Claim Dates

REST DAYS

Sundays

(1) off	(8) $28.88	(15) $28.88	(22) $28.88	(29) off

Saturdays

(7) $28.88	(14) 28.88	(21) 28.88	(28) off

July 1962	Days Worked	Earnings
Straight	22	$416.44
Overtime	6	173.28
Total	28	$589.72

OPINION OF BOARD: Claimant was regularly assigned to a Laborer position in the Stores Department. On the dates mentioned in the claim he filled the position of Counterman in that department when the regular incumbent and the regular relief incumbent were on vacation. Claimant's position was blanked on those dates.

Employes contend that Carrier violated the National Vacation Agreement, particularly Article 6 thereof, and also Rule 48 of the Clerks' Agreement.

Article 6 of the Vacation Agreement of December 17, 1941 says:

> "6. The carriers will provide vacation relief workers, but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance, and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

Rule 48, entitled "Absorbing Overtime", reads:

> "Employes will not be required to suspend work during regular hours to absorb overtime."

Carrier's position is stated in a letter dated January 22, 1963, the pertinent part of which says:

> "Mr. Stynski did not suspend work on his assignment. He was properly advanced to work on a Counterman position on July 9, 16, and 23, on which dates the employe who would have filled the job normally was on his vacation. Mr. Stynski was paid at the higher rate of the position worked on the claim dates. He did not suffer any loss of time or earnings.
>
> The appeal and claim are denied."

There is no substantive evidence that Rule 48 was violated. Claimant's position was not suspended (a) "to equalize or absorb overtime which he had already earned" or (b) to deprive "the employe of the other position of overtime which would otherwise have accrued." (Award 13218.) Here, Claimant was not transferred from his Laborer position to avoid overtime he would have been entitled to. Neither was anyone else deprived of earned overtime. Claimant's position was blanked; no one worked it on the dates of the claim. Certainly, the incumbent employes of the Counterman position had no right to overtime. They were on vacation. No other employe of the Counterman position has made claim to any suggested overtime. Further, there is no evidence in the record that anyone else would have been entitled to work the Counterman position at the overtime rate.

Employes argue that Article 6 of the Vacation Agreement obligates the Carrier to "provide relief workers." But, this obligation is based on the condition that the work of the vacationing employe "is of such a nature that it cannot remain undone without increasing the work burden either of those employes remaining on the job or of the employe when he returns from his vacation." (Interpretation of Referee Wayne Morse.) There is no evidence in the record that the blanking of Claimant's Laborer position increased the work burden on his job when the vacationing employes returned to their regular assigned Counterman position.

Award 14622, cited by the Employes, is not applicable because in that case the Claimant performed the duties of the vacationing employe and "she continued to perform the urgent duties of her regular position." Under those circumstances, and on the basis of that record, it was found that an increased work burden was placed upon the Claimant during that period. For the same reason, Award No. 5, Special Board of Adjustment No. 167 is also not applicable. Both Awards are based upon Referee Morse's Interpretation above quoted, which does not apply to the instant claim because no one was burdened with increased work.

For the reasons stated, we are obliged to conclude that there is no merit to the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1966.

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