

**Award No. 15909
Docket No. CL-16235**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5959) that:

(1) Carrier violated rules of the Clerks' Agreement when on November 9, 1964, it used First Trick Yard Clerk to double over four (4) hours' overtime, and Third Trick Yard Clerk four (4) hours' overtime to replace Mr. R. P. Troxell, regularly assigned Second Trick Yard Clerk.

(2) Carrier shall now be required to pay Mr. T. L. Phelps one day's pay, or eight (8) hours' pay at the time and one-half rate, for November 9, 1964.

EMPLOYEES' STATEMENT OF FACTS: On November 9, 1964, Mr. R. P. Troxell was the assigned incumbent of Second Trick Yard Clerk position at Fort Worth, Texas. Approximately fifteen minutes before Mr. Troxell was scheduled to start work on this date, he called the Agent's office to notify the Agent that he was sick and unable to report for work. There were no extra or furloughed employees available and the Agent instructed the First Trick Yard Clerk to remain on duty for four hours and later called the Third Trick Yard Clerk to report four hours early to fill the vacancy caused by the illness of Mr. Troxell.

Carrier made no effort to call the senior available man, Mr. T. L. Phelps, who was off on his rest day.

Claim was handled with proper Carrier officers up to and including the Assistant to General Manager (Labor Relations). See Employees' Exhibits Nos. 1 through 7.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The regularly assigned incumbent of the second trick yard clerk position, Fort Worth, called in by telephone

about 15 minutes before he was to go on duty and said that he was sick and could not report for duty. During the intervening period between the time that man laid off sick and the time the job was to start, the local officers attempted to get an extra clerk for this service, but no extra clerk was available on such short notice and the first trick yard clerk was, therefore, instructed to stay on duty for an additional four hours at the overtime rate and the third trick yard clerk was called in four hours early and paid on the same basis of overtime for the four hours ahead of his regularly assigned starting time.

OPINION OF BOARD: The facts in this case, not being in dispute, simply and concisely stated are that approximately fifteen minutes before employe Troxell was scheduled to report for work on his regular assignment as second trick yard clerk, he called his superior and informed him that he was sick and would be unable to report for work. Carrier states that it tried to secure an extra employe for this vacancy and was unsuccessful; that, because of the shortness of the notice, it doubled the first trick clerk for four hours' overtime and called the third trick clerk for four hours' overtime ahead of his scheduled work assignment. No attempt was made to contact the Claimant who was available, was observing a day of rest, and was senior to both the first and third trick clerks.

Petitioner bases this claim on Rules 4, 6, and 42 of the Agreement. Rule 4(a) provides:

"(a) Seniority begins at the time the employe's pay starts on the seniority district and in the seniority class to which assigned, and will apply in filling new positions or vacancies and in the reduction of forces. This is not to conflict with Rule 6."

Rule 6 reads --

"RULE 6.

PROMOTION, ASSIGNMENT AND DISPLACEMENT

(a) Employes covered by these rules shall be in line for promotion. Promotion, assignment and displacement shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, the Management to be the judge, subject to appeal by employe.

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.

(b) A senior employe who bids for an advertised position, or who is refused the opportunity to exercise seniority over junior employe under any of the other conditions provided for in this agreement, and who is not assigned, will, if he makes written request therefor, be given in writing the reason for the non-assignment."

Rule 42 is the overtime rule and provides:

"RULE 42. OVERTIME

Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of the meal period, on any day will be con-

sidered overtime and paid on the actual minute basis at the rate of time and one-half."

As we read the record before us, the issue of necessity would have to be decided on precisely what is meant by the word "vacancies" as that term is used in Rule 4 (a). Under the circumstances of this case as related infra, was a vacancy created as that term is used in the above cited rule? Carrier arguendo states that due to the shortness of the notice from the regular employe, it was faced with an emergency; however, there is no evidence offered that would convince us that such an emergency actually existed. Telephone calls had to be made to both the first and third trick clerks; it seems that such a call could have been made to the Claimant. There are no de-limiting words of definition of the term "vacancy" contained in the Agreement, nor are there any attempts to explain precisely what is meant by this word insofar as Carrier is concerned. Does a vacancy occur when two hours' notice is given? Does a vacancy occur when eight hours' notice is given, or does it occur when only fifteen minutes' notice is given?

The language contained in 4(a) simply states seniority will apply in filling new — VACANCIES. Carrier should have called the Claimant to give him an opportunity to fill the vacancy at hand. Failing to do so, it violated Rule 4(a). Furthermore, Claimant was entitled to the rate lost, i.e. eight hours at the time and a half rate as provided in the rule covering service on a rest day. (See Awards 13833 — Wolf, 13469 — Zack.) We will sustain the claim as submitted.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.