



Award No. 16560
Docket No. CL-17045

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-6272) that:

1. The Carrier violated the Clerks' Agreement when it utilized the services of outsiders having no previous employment relationship or seniority, on an extra basis to relieve temporary vacancies and/or positions pending assignment by bulletin, rest day work and such extra work as may occur.

2. That employes with established seniority rights, who were available, willing, able and qualified to perform the work in question be allowed a day's pay, at the applicable overtime rate of the position and/or work involved effective with the period here involved, namely, March 21, 1966 to and including June 12, 1966 and continuing thereafter until corrective measures are applied.

3. The name of Claimants, dates on which the violation occurred, the rates of pay involved, vacancy and/or work involved and the names of the outsiders used for the performance of the work in question have been furnished to the Carrier at all stages of handling, and are attached hereto as Appendix "A."

EMPLOYES' STATEMENT OF FACTS: The Carrier performs switching and transfer service in the Chicago Switching District with line haul and other switching Carriers, and in addition serves industries along its line of railroad. It maintains yards at South Chicago, 87th Street, West 22nd Street and Clearing, Illinois. Each of the four locations are from two to twenty miles apart. Its largest car handling operation is performed at Clearing Station. It maintains office forces at different locations in Clearing such as, the East and West Yard Offices East and West sub-offices and Agent's Central Office. Each of the locations are from one to two miles apart and collectively they are known as part of the Clearing facility.

Prior to March 1, 1964, or the execution of a new agreement, which became effective March 1, 1964, all of the aforementioned locations at Clearing, as well as the Yards located at South Chicago, 87th Street and West 22nd

his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the proper Carrier officer, with copy to the General Chairman. If such employe should again desire to be considered available for such service, notice to that effect, as outlined hereinabove, must again be given in writing. Furloughed employes who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule. Furloughed employes so used will not be subject to rules of the applicable collective agreements which require advance notice before reduction of force.

3. Furloughed employes who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employes will be placed on the extra list in seniority order and used in accordance with the rules of this agreement.''' (Emphasis ours.)

OPINION OF BOARD: The issues in this case were resolved in our Award No. 15802 in which the parties herein were parties therein:

In Award No. 15802 we said:

" . . . The Agreement is clear that, unless modified by special agreement such as the establishment of an extra board under Rule 24, the parties intended that work of the kind here in dispute be assigned to employes who had already acquired seniority when the assignments opened up and then in the order spelled out in the many rules written into the Agreement for the purpose of establishing that order of priorities."

In that Award we failed to cite the provisions of the Agreement relied upon to support that finding. Carrier now contends that: (1) the finding has no Agreement support; (2) the finding is palpable error; and, therefore, (3) the doctrine of *stare decisis* is not applicable in the instant case.

The facts, succinctly stated, are that in the sole seniority district established under the Agreement the work, contractually, had been performed by regularly assigned or furloughed employes. Then, the Carrier augmented the furloughed employe force by about 10 new hires. Clerks contend that the Agreement reserved to furloughed and regular employes the work involved and in the absence of an available furloughed employe, when such a classification had a primary right to the work, the right to the work contractually vested in available regularly assigned employes. Carrier, admitting that the new hires were hired to perform extra work, argues: (1) its management prerogative to hire employes is unimpaired by the Agreement; (2) each new hire was vested with seniority rights, pursuant to Rule 3(a) of the Agreement at the time his "pay starts;" and (3) it was within its rights in comingling the new hires with the furloughed employes with identical rights subject to seniority.

No issue is raised in this case relative to Carrier's exercise of its management prerogative to hire. No issue is raised as to when seniority begins for

a new hire. The issue confronting us is whether Carrier could place new hires in the same classification, with the same contractual rights to work, as furloughed employees.

The following provisions of the Agreement, with emphasis supplied, are pertinent to resolution of the issue:

"RULE 3. SENIORITY DATUM

(a) Seniority begins at the time an employee's pay starts.

* * * * *

(d) Seniority rights of employees to vacancies or new positions or to perform work covered by these rules will be governed by the rules of this agreement.

* * * * *

RULE 6. SENIORITY ROSTER

(a) A seniority roster showing rank number, name, descriptive title of position, location and seniority date of all employees will be posted in agreed upon places accessible to all employees affected. Names of employees retaining seniority rights under Rule 3 (c) and Rule 36 shall be carried on the seniority roster and an asterisk (*) shall be placed before such names to properly designate them.

RULE 7.

EXERCISE OF SENIORITY

Seniority rights of employees covered by these rules may be exercised only in case of vacancies, new positions or reduction of forces, except as otherwise provided in this Agreement.

The exercise of seniority in the reduction or restoration of forces or displacement of junior employees, is subject to the provisions of Rule 8 and 16.

(NOTE: Rule 8 deals with Promotion; Rule 16 with time in which to qualify. Neither Rule is pertinent in this case.)

* * * * *

RULE 9.

BULLETINS - ADVERTISING NEW POSITIONS AND VACANCIES

(a) New positions or vacancies of more than thirty (30) calendar days' duration will be promptly bulletined in agreed upon places accessible to all employees affected for a period of seven (7) calendar days. Bulletin to show location, descriptive title of position, brief description of the principle duties, rate of pay, assigned hours of service, assigned rest days and assigned meal period.

RULE 10.

TEMPORARY ASSIGNMENT

Bulletined positions may be filled temporarily pending assignment. In the event no applications are received from employees in service covered by these rules, and rule 19 has been complied with, the position may be filled by an individual not covered by this agreement.

(NOTE: Rule 19 in pertinent part is setforth, infra.)

RULE 11. SHORT VACANCIES

Positions or vacancies of thirty (30) calendar days or less duration shall be considered temporary and need not be bulletined. However, when found vacancy will extend beyond thirty (30) day limit, same shall be immediately bulletined showing, if practicable, expected duration of vacancy.

Employees will be selected to fill positions pending assignment and all other vacancies of thirty (30) calendar days' or less duration in accordance with Rules 8 and 19.

* * * * *

RULE 19.

REDUCING FORCES - ABOLISHING POSITIONS

* * * * *

(e) Employees who do not possess sufficient seniority to displace junior employees shall be considered as furloughed. When forces are increased or vacancies occur, furloughed employees shall be returned to service in the order of their seniority, except as otherwise provided in this rule.

(f) Furloughed employees, when available, shall be given preference on a seniority basis to all extra work, short vacancies, and/or vacancies occasioned by the filling of positions pending assignment by bulletin which are not filled by rearrangement of regular forces.

* * * * *

(g) When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee who has protected his seniority as provided in this rule, the senior furloughed employee will be called and assigned to fill the position. . . .

* * * * *

(i) The following provisions, identified as 1, 2, 3, Note 1-A and Note 1-B, amend and/or supersede any of the above provisions of this rule which are in conflict therewith:

1. The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph 2 hereof their desire to be so used. This provision is not intended to supersede rules or practices which permit employees to place themselves on vacancies on preferred positions in their seniority districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled. This does not supersede rules that require the filling of temporary vacancies. It is also understood that management retains the right to use the regular employee, under pertinent rules of the agreement, rather than call a furloughed employee.

* * * * *

3. Furloughed employees who have indicated their desire to participate in such extra and relief work will be called in seniority order for this service. Where extra lists are maintained under the rules of the applicable agreement such employees will be placed on the extra list in seniority order and used in accordance with the rules of this agreement.

* * * * *

RULE 24. EXTRA BOARDS

When it is mutually agreed, an extra board will be maintained and rules governing the manner of working extra board employees will be established in writing by mutual agreement.

* * * * *

RULE 38. WORK WEEK

* * * * *

(j) Work on unassigned days.

Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

We interpret the foregoing quoted provisions of the Agreement to support the following findings:

1. While a new hire's seniority under Rule 3 (a) "begins at the time" his "pay starts" his right to work covered by the Agreement is qualified by Rule 3 (d);

2. The right to work, here involved, covered by the Agreement is reserved to either furloughed or regularly assigned employees;

3. Rule 9 requires that new positions or vacancies of more than thirty calendar days be bulletined.

(NOTE: Carrier has submitted no evidence that it bulletined positions or vacancies filled by the new hires. If the duties of the new hires was to perform extra work their positions were new positions subject to compliance with Rules 9 and 10 to protect the seniority rights of then present employees.);

4. A furloughed employe has an ancestral established continuing employer-employe relationship with Carrier. Carrier may not unilaterally and arbitrarily confer the status of a furloughed employe on a new hire;

5. Carrier has the right to hire employes to serve as extras if it does so in compliance with Rule 24. To the extent of that Rule the prerogative of Carrier to hire is proscribed. Carrier's action in the hiring of new employes, admittedly to perform extra work did, unilaterally, *de facto*, establish an "extra board" in violation of Rule 24;

6. Carrier has the right and duty, subject to compliance with the Rules of the Agreement, to avoid the payment of overtime rates.

Upon the basis of the foregoing we hold that the finding in Award No. 15802, quoted, *supra*, is supported by the Rules of the Agreement. We, therefore, will sustain the instant Claim, the monetary award in each instance to be paid to the senior named available Claimant for each violation.

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 Carrier violated the Agreement.

AWARD

Claim sustained as set forth in the Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.