



Award Number 17603

Docket Number CL-18149

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6558) that:

1. The Carrier violated the Clerks' Agreement when on August 31, 1967, it rearranged the force in the Yard Office at Hinkle, Oregon in violation of Rule 12 (e) of the Agreement of May 1, 1955.
2. Carrier shall now compensate Donna A. Lyons for seven (7) hours at overtime rate of IBM Clerk, Job No. 19, Hinkle, Oregon for date of August 31, 1967 for hours 9:00 A.M. to 4:00 P.M.

EMPLOYEES' STATEMENT OF FACTS: On August 31, 1967, there was a temporary vacancy on IBM position No. 19 with assigned hours 8:00 A.M. to 4:00 P.M. and under Rule 12 (e) of the Agreement of May 1, 1955, notice was posted on bulletin board to cover this vacancy. There were no applications received for this vacancy and the Carrier rearranged the regular force by assigning Clerk Ralls to the vacancy, after having removed her from her regular position of General Clerk. Clerk Ralls was later removed from this position after having worked it for one (1) hour, Carrier claiming she was not qualified to work it, resulting in the claim for Donna A. Lyons.

Claim was filed by Local Chairman with Mr. W. G. Johnson, Superintendent, on October 29, 1967. (Employees' Exhibit "A")

Claim was declined by the Superintendent on November 6, 1967. (Employees' Exhibit "B")

Claim was appealed to the Assistant to Vice President on January 2, 1968. (Employees' Exhibit "C")

Claim was declined by the Assistant to Vice President on January 26, 1968. (Employees' Exhibit "D")

Conference was held on February 20, 1968.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: There is on file with your Honorable Board a copy of the current agreement between the Union Pacific Railroad Company (referred to as Carrier) and the Brotherhood of Railway, Airline and Steamship Clerks (referred to as the Organization), effective

H—Letter dated February 3, 1968, Mr. Beckley to Mr. Hallberg, offering the Carrier's position that the agreement was not violated.

I—Letter of March 5, 1968, confirming the results of the February 20 conference in which Mr. Beckley again apprised Mr. Hallberg of the Carrier's stated position.

(Exhibits Not Reproduced)

OPINION OF BOARD: The facts in this case are not in dispute. The Carrier, after posting notice in accordance with Rule 12(e) and no application having been received for a temporary vacancy, filled the vacancy through rearrangement of the force on the same shift. After having so rearranged the force to fill this vacancy, it was determined by the Carrier that the person assigned to fill the temporary vacancy was not qualified for the position. It, therefore, again rearranged the work force on the same shift to fill this temporary vacancy. Claimant herein was the senior clerk available. This claim is filed on her behalf, claiming that the Carrier was not authorized by Rule 12 (e) to rearrange the work force on the same shift a second time, and further that such action was in violation of Rule 38 (b) of the controlling agreement. The pertinent portions of the rules in question are as follows:

"Rule 12 (e)

When necessary to fill temporary vacancies or positions which are not bulletined, notice will be posted on bulletin boards in the office or station where vacancy occurs.

Pending assignment of the senior qualified applicant as provided herein or in the event no applications are received, the vacancy may be filled by rearranging the force on the same shift in the office or station where vacancy exists"

"Rule 38. Overtime

(b) Employees will not be required to suspend work during assigned hours to absorb overtime."

It is well established that this Board is bound by the terms of the agreement and may not expand the terms of the agreement by adding to or detracting from the provisions thereof. The only restrictions on the Carrier in rearranging the force under Rule (e) to fill a temporary vacancy after no applications are received are 1) that it must be done on the same shift, and 2) in the office or station where the vacancy exists. The second arrangement was made using the force on the same shift and in the office or station where the vacancy existed. There are no other requirements provided in Rule 12 (e).

" . . . We have no power or authority and we may not make new provisions, abrogate or alter existing provisions of the Agreement. That is the province of the parties themselves. We endeavor to ascertain and to give effect to the intention of the parties and that intention is to be deduced from the language employed by them." Award 16489 (Perelson)

The Claimant further contends that Rule 38 (b) was violated. We do not concur. Neither of the persons used to fill the temporary vacancy performed work on an overtime basis.

This Board has previously stated the elements required to be proved in order to sustain an alleged violation of the absorbing overtime rule. These were restated in Award 16851 (Perelson) as follows:

"This Board has consistently held, as is argued in behalf of Carrier, that 'to find a violation of the (suspending work to absorb overtime) rule the record must contain credible evidence showing either (a) that the Carrier suspended an employee (Claimant) during his regularly assigned hours to equalize or absorb overtime which he had already earned, or (b) that an employee may not be taken from his regular assignment and used on the work of another position where it would result in depriving the employee of the other position of overtime which would otherwise have accrued. . . .'"

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 Employees involved in this dispute are respectively Carrier and Employees 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1969.