Award Number 17916
Docket Number CL-18248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6605) that:

(1) The Bureau violated the Clerks' Agreement when it required Mr. W. J. Phillips to suspend work on his position as Traveling Agent at Green Bay, Wisconsin and work position of Agent at Green Bay, Wisconsin on August 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1967 and would not permit Mr. F. D. Farrell, assigned to position Agent, Green Bay, Wisconsin, to work his position during this period, which was his assigned vacation period.

(2) Mr. W. J. Phillips shall now be paid at the time and one-half rate of his regular assignment for each day withheld from his assigned position in addition to the amount he has actually been paid for working the position of Agent at Green Bay, Wisconsin. In addition, Mr. F. D. Farrell shall be paid at the time and one-half rate of his regular assignment for each day Mr. Phillips was required to work the position of Agent at Green Bay, Wisconsin.

EMPLOYES' STATEMENT OF FACTS: W. J. Phillips, with a seniority date of January 8, 1934, was the regularly assigned occupant of position of Traveling Agent, Position No. 25, hours of service 8:00 A.M. to 5:00 P.M., Monday thru Friday with rate of pay of $26.6725 per day, with headquarters at Green Bay, Wisconsin.

F. D. Farrell with a seniority date of March 21, 1952 was the regularly assigned occupant of Position No. 58 Agent at Green Bay, Wisconsin, hours of service 8:00 A.M. to 5:00 P.M., Monday thru Friday, with rate of pay of $25.6855 per day.

Since the year 1953 it has been the practice of former District Manager C. E. Koplien to allow the traveling agents in the Milwaukee Bureau District to take their vacation each year at any time they desired with only the stipulation the notify his office one week in advance to the time they desired to go. W. J. Phillips representing our Organization as Local Chairman agreed to this procedure due to the fact no vacation relief was used on traveling agent positions. This past practice arrangement is evidenced in Employes' Exhibits "A" through "K".

OPINION OF BOARD: Claimant Phillips is the traveling agent at Green Bay, Wisconsin. Claimant Farrell is the agent at Green Bay. In May of 1967, the Carrier's vacation schedule was drawn up scheduling Claimant Farrell's vacation from August 7, 1967, through August 25, 1967. Phillips requested that a part of his vacation be also scheduled for August 16 through August 25, 1967. This request was denied by Carrier stating that Phillips would be required to cover Farrell's position on those days.

Claimant Phillips covered this position under protest charging that Carrier's action in requiring Phillips to work in this position on those days constituted a violation of Rule 36 of the agreement. That rule provides as follows:

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

Phillips also claims that this refusal to let him take his vacation violated an established past practice of letting him take his vacation at any time with only one weeks notice. The Organization itself cites Award No. 6308 (Wenke) which holds as follows:

> "When the meaning and intent of the provisions of a collective bargaining agreement are clear and unambiguous unprotested past practices, which are violations thereof, are not controlling and will neither be permitted to vitiate the force nor prevent the enforcement thereof. See Awards 3444 and 5834 of this Division."

We hold that the meaning and intent of the collective bargaining agreement at hand is clear and unambiguous, and that if the parties' practices in the past have been in violation of that collective bargaining agreement then those past practices will not be allowed to vitiate the force of the agreement.

Carrier cites Article 10 (a) of the National Vacation Agreement in support of its case:

> "An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employee, such employee shall receive the rate of the relief position. If an employee receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employee in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employee will be paid."

and Rule 43 (a) of the Agreement effective September 1, 1949:

> "Employes temporarily assigned to higher rated positions shall receive the higher rates while occupying such positions; employes temporarily assigned to lower rated positions shall not have their rates reduced."

The concept of managements rights to make work assignment is stated in Award 5331 of hte Third Division, to-wit:

> "Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion.

It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy.

* * *."

The issue resolves itself to this point, i.e. has the Carrier by agreement to Rule 36, restricted its right to, in effect, blank one position and assign the incumbent of that position to fill another position, while the incumbent of the latter position is on vacation; or must Carrier allow the incumbent of that latter position to work during his vacation drawing the punitive rate.

The most pertinent award cited by the Organization is No. 5578 (Whiting) which dealt with virtually the same rule as Rule 36. We read into that decision a refusal by the Board to amend the subject rule by adding the term "to absorb overtime" the phrase "on his own position". However, we also read into that Award a willingness by the Board to amend the subject rule by adding to the term "suspend work" the term "on his own position". This is an inconsistency.

If it was the intent of the parties to forbid employee A from absorbing overtime due to employee B it was also the parties intent to require a suspension of all work on the part of employee A, whether that work be A's or B's. There was no such suspension of work in this case.

The "four corners" of the agreement must be read to reach the meaning of the parties and specific provisions will control over general provisions in case of a conflict.

Rule 43(a) of the agreement effective September 1, 1949, and Article 6 and Article 10 (a) of the Vacation Agreement of December 17, 1941, clearly show an intent of the parties to allow temporary assignments as between positions and to allow the assignment of one regularly assigned employee to fill the vacancy of another regularly assigned vacationing employee.

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

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 8th day of May 1970.

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