

Award No. 18025
Docket No. CL-18448

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6685) that:

1. Carrier violated the Clerk's Agreement when it did not call extra board clerk, Mr. J. K. Brant for a known vacancy in the Office of Freight Agent, for the dates of January 20, 1968, February 3, 1968 and February 12, 1968 and that

2. Clerk J. K. Brant shall now be compensated at the straight time rate of pay for eight hours for each of the above dates and for each date until this violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Claimant occupied an extra board position in the Transportation Department at Cumberland, Maryland, which serviced, among other offices, the office of the Freight Agent, at this location.

On the dates of January 20, February 3 and 12, 1968, (all dates are Saturdays) the Carrier filled the position of Rate Clerk at the Agent's Office, Cumberland, Maryland. The Claimant (Brant) was head out on the extra list and had been previously used consistently to work in the office as a Rate Clerk.

However, on the dates in question, Carrier chose to call the oldest qualified clerk in the office (C. B. Miller) since the regular assigned Rate Clerk preferred not to work on his rest day. Miller performed the work at the time and one-half rate of pay.

Claim was entered and declined by the Agent and subsequent appeal was made to the Supervising Agent under date of March 27, 1968.

The appeal by the Employees was rejected by Mr. Wilson in his letter to their representative dated July 8, 1968.

The claim was then moved on to the System Superintendent by the Employees in letter dated August 10, 1968.

Mr. Mowen in his letter dated September 30, 1968 to the Employees, rejected the appeal.

Employees then appealed the decision to the Manager of Labor Relations under date of November 16, 1968, identified case number was C99.

Mr. Plummer, in letter dated February 7, 1969, also rejected the contentions of the Employees.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Office of the Freight Agent at Cumberland, Maryland is composed of the following positions and employees:

Title	Rate	Incumbent	Seniority
Agent	\$788.84 Mo.	W. J. Robertson	10-27-41
Chief Clerk	650.20 Mo.	E. S. Wilson	9-18-57
Rate Clerk	3.5872 Hr.	A. J. Evans	11- 2-43
Demurrage Clerk	3.4075 Hr.	C. B. Miller	8- 1-41
Clerk-Warehouseman	3.4803	D. J. Corley	1- 1-52

The above positions are assigned on a Monday - Friday work week, Saturday and Sunday rest days, with work hours from 8:00 A.M. to 5:00 P.M., and one hour for lunch.

It is frequently necessary for the position of Rate Clerk to be worked one-half day on Saturday to waybill shipments received from several industries in the area. The incumbent of the Rate Clerk position does not desire Saturday work and as a consequence Clerk C. B. Miller, who is qualified and had formerly worked the Rate Clerk position, is normally utilized for this work on Saturdays.

The claimant has a seniority date of June 21, 1966. On the claim dates he was on the Clerks' extra board at Cumberland and contends that he should have been called for the Saturday work as Rate Clerk instead of using a regular employee in the office at time and one-half rate.

OPINION OF BOARD: Claimant occupied an extra board position in the Transportation Department at Cumberland, Maryland, which serviced, among other offices, the office of the Freight Agent at this location.

The Employees contend the Carrier violated the Clerks' Agreement when it did not call the Claimant for a known vacancy in the Office of Freight Agent for the dates of January 20, 1968, February 3, 1968 and February 12, 1968 (all dates are Saturdays).

The Rule involved in this dispute is Rule 22.

"RULE 22 — EXTRA BOARD

(a) When it is mutually agreed (Rule 47(b) not applicable), an extra board will be maintained, and positions on extra board shall be bulletined, bulletin to show office, terminal or territory covered; rates of pay and hours of assignment to be shown as 'various, as per positions filled.'

(b) New employees assigned to extra boards shall hold seniority as provided in Rule 3.

(c) An employee from extra board placed on a vacancy will fill it until the return of regular occupant or the position is advertised and filled. Where more than one position is maintained on the extra board, employees will be worked first-in first-out, and board will be reduced as requirements permit. Regular employees displaced or cut off account reduction in force may displace junior employees on extra board positions.

(d) Where the regular force in an office is rearranged so as to fill competently a temporary vacancy, the position finally made vacant by such temporary arrangement will be filled from the extra board.

(e) An extra board employee who misses a call, or is permitted to mark off duty when called, will not be permitted to mark up on the extra list again until the employee who is used on the position completes the assignment and he will then be marked up at the bottom of the list.

An extra board employee who marks off at any time, except as provided above, will be required to remain off duty for not less than eight hours before being permitted to mark up at the bottom of the extra list. This provision does not apply to employees attending investigation who may mark up on the list immediately following the investigation.

Section (e) will not prohibit the Carrier from using these men if their services are needed.

(f) Extra board employees shall be called at least one and one-half hours before reporting time, unless agreed to otherwise to suit local conditions.

(g) Where work is required by the Management 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 40 hours of work that week; in all cases by the regular employee."

The question to answer here is a simple and uncomplicated one: Did the Carrier violate the provisions of the Rules Agreement, more especially Rule 22(g), when it failed to call the first-out extra board man for work to be performed on a day that was not part of any assignment?

Saturday is an unassigned day for the employees in the Office of the Agent at Cumberland, and under Paragraph (g) of Rule 22 where work is required on a day which is not part of any assignment, it may be performed by an employee who does not have 40 hours of work in that week; in all other cases the regular employee is entitled to the work.

The text and content of Rule 22(g) indicates that the first clause is a permissive rule in that it gives the Carrier an option to call an extra man who will otherwise not have 40 hours of work that week at the straight time rate. The final clause of Rule 22(g) is not permissive. It indicates clearly that in all other cases the regular employee is entitled to the work.

The record shows that the days in this claim were not part of any assignment — it is classified as a five day assignment, with no regular relief man assigned to it. The record also shows that the Claimant was available at the straight time rate and that is what this claim is entered at — the straight time rate of pay. We cannot construe "the regular employee" as meaning a regular employee. Such construction would place practically limitless bounds on the Carrier in assigning work in similar instances and would do violence to the specific wording of Rule 22(g).

The Carrier argues that the Claimant in this case is not a Rate Clerk and is not qualified to rate and route outbound shipments. For that reason it was necessary to call out a regular clerk in the office who was competent to fulfill the requirements of the service.

This Board has consistently held that it is the Carrier's prerogative to determine the fitness and ability of its employees for positions and that the Carrier is not obligated to give an employee a trial on a position when it has determined he is lacking in fitness and ability. Although the Employees contend that Claimant was used numerous times on the position in question and that no time did Carrier ever raise the contention that he was unqualified, his use in the Agents office was during regular work hours when he was under supervision. The checking of rates was done by other employees who were qualified. He was never assigned on Saturday when he would be alone in the office and have full responsibility for the billing of outbound freight.

When the incumbent of the Rate Clerk position did not desire Saturday work, Clerk C. B. Miller, who was qualified and had formerly worked the Rate Clerk position was normally utilized for this work on Saturdays.

The burden is on the Petitioner to prove, with competent evidence, that the Carrier's action was arbitrary and capricious. Claimant has failed to offer evidence to refute the conclusion reached by the Carrier as to his lack of qualifications. Moreover, there is no evidence that Carrier's action was either punitive or discriminatory. Accordingly, the claim must be denied.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

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