



Award No. 18623
Docket No. CL-18799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6775) that:

1) Carrier violated the rules of the Clerks' Agreement at Milwaukee, Wisconsin when it removed employee D. LaRue from his regular Relief Road Caller assignment and required him to fill a temporary vacancy on Yard Crew Caller Position 0956 on Sunday, December 29, 1968.

2) Carrier shall compensate employee D. LaRue for eight (8) hours at the pro rata rate of Road Caller Position 0959 and for eight (8) hours at the time and onehalf rate of Yard Crew Caller Position 0956 less amount paid him for Sunday, December 29, 1968.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintains the following Road Caller positions in effect at Muskego Yard, Milwaukee, Wis. Position Nos. 0959, 0960 and 0961, all of which are 7-day positions with relief provided on the rest days thereof.

Employee D. LaRue is the regularly assigned occupant of Relief Road Caller Position and relieves Position 0959 from 7 A. M. to 3 P. M., Sunday and Monday; Position 0960 from 3 P. M. to 11 P. M., Tuesday and Wednesday; and Position 0961 from 11 P. M. to 7 A. M., Thursday.

The Carrier also maintains in effect the following Yard Clerk Positions at Muskego Yard, Milwaukee, Wisconsin; Position Nos. 0956, 0957 and 0958, which are also 7-day positions with relief provided on the rest days thereof.

Employee M. E. Cronce is the regularly assigned occupant of Relief Yard Caller position, and relieves Position 0956 Saturday and Sunday; Position

OPINION OF BOARD: The Claimant, regularly assigned as Relief Road Caller, was reassigned on December 29, 1968 to Yard Caller 09560 (7:00 A. M. to 3:00 P. M.) to fill a vacancy created by the absence of the Relief Yard Caller. On the succeeding shift on the same date (3:00 P. M. to 11 P. M.) another temporary vacancy occurred on Yard Caller 09570, again due the absence of the regular incumbent, and the Claimant was called and assigned as a replacement. He was compensated at the straight time rate for the position filled for the first shift worked on this date and at the applicable overtime rate for the position on the second shift.

The theory of the Employees claim rests on the premise that the Carrier was not permitted to transfer the Claimant from his regularly assigned position as Relief Road Caller over his protest, citing violation of Rules 16 and 32 (g) which read:

"RULE 16 — RATING POSITIONS

Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

"RULE 32 — OVERTIME

(g) When additional help is required for overtime work, or when the duties to be performed on overtime cannot be identified with a specific position, employees will be assigned to such overtime in accordance with seniority, fitness and ability, first from the subdivision of the department wherein the work occurs and, secondly, from the entire department."

It is argued that Rule 16 "explicitly" prohibits the transfer of rates from one position to another and that 32(g) prescribes how the selection of an employee for overtime work must be made, which allegedly was ignored by the Carrier. This Board does not consider Rule 16 to have been involved here in the complete absence of a showing by the Employees of its violation. The Claimant was paid the higher rate of the position, Yard Caller 09560, as required under that rule.

We will therefore first examine the allegation with respect to Rule 32(g). This rule requires that overtime assignments be given to available qualified employees, in this case by calling regularly assigned Yard Callers to serve on their day of rest. Failure to so call these employees would, we believe, have constituted a violation of this rule and have invited claims from the regular incumbents because of such failure or neglect on the part of the Carrier.

The Carrier relies on Rule 17 which reads in pertinent part:

"(b) An employee temporarily assigned by proper authority to a position paying a higher rate than the position to which regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. An employee temporarily assigned by proper authority to a position paying a higher rate of pay for less than four (4) hours in one day will be paid the higher rate therefor on the minute basis.

“(c) A ‘temporary assignment’ contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to the temporary increase in the volume of work does not constitute a temporary assignment.”

This rule sets forth the manner in which an employee will be paid during a temporary reassignment from his regular position and defines a “temporary assignment”. The Employees argue that this is simply a “pay rule” and does not bestow on the Carrier the unilateral right to reassign employees at will and that to do so would serve to destroy or negate the value of their contractual right to a position gained by their seniority, fitness and ability.

Contrari-wise the Carrier contends that Rule 17 permits the assignment of any employee to fill a position other than his regularly assigned position so long as he is compensated in accordance with the terms of the rule. In support of that position it cites Award 16611 (Dorsey) and quotes therefrom as follows:

“We now move to consideration of Rule 17. Clerks say this rule by its caption is only concerned with rates of pay and is not susceptible to any other concoction. We construe the Rule as prescribing the rates of pay agreed upon by the parties upon the exercise by Carrier of a management prerogative recognized by the parties — the temporary assignment by Carrier of an employee to work on a position other than one to which he is regularly assigned.

For the foregoing reasons we will deny the claim.”

Other supporting awards are also cited which follow Award 16611 including 17429 (Jones), 17064 (Dugan), and 18455 (Rosenbloom).

The unrefuted evidence placed in the record by the Carrier on the property is to the effect that the Claimant was the only available Caller qualified to fill the vacancy created by the absence of the Relief Yard Caller by reason of his experience. This statement is further elaborated upon by the Carrier to the effect that it “activated” Rule 32(g) and “called qualified men in seniority order to fill position 09560 on an overtime basis on Sunday, December 29, 1968 but was unsuccessful in filling said position on an overtime basis as there were no men available to fill same.” It is further pointed out that if any one of the qualified men had been passed over in the effort to fill the vacancy, a claim from the senior employee would surely have been filed. Such a claim was not filed.

Whether or not the Carrier considered Rule 32(g) to be controlling, as argued by the Employees, the evidence supports the contention that it met the requirements of that rule. It is the opinion of this Board that, additionally, it met the requirements of Rule 17 relating to compensation of the Claimant and that its action in making the reassignment was a proper exercise of management discretion as the rule was construed in Award 16611 (Dorsey), *supra*, among others.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.