

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21092
Docket Number CL-21116

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7777) that:

1. Carrier violated the Clerks' Working Agreement at **Balmer** Yard, Seattle, Washington, by failing to call Mr. Ollie **Munier**, **PICL** Clerk, to fill a vacancy on **PICL** Clerk Position No. B-26 on October 31, 1973.

2. Carrier violated the Clerks' Working **Agreement** at **Balmer** Yard, Seattle, Washington, by unilaterally removing the regularly assigned **employee** from his regular position of Yard Checker D-25 to fill a vacancy on **PICL** Clerk B-26 position on October 31, 1973.

3. Carrier violated the Clerks' Working Agreement at Balmer Yard, Seattle, Washington, by **unilaterally removing** the regularly assigned **employee** from his regular **position** of General Clerk C-27 to **work** Yard Checker position D-25 on October 31, 1973.

4. Carrier shall now be required to compensate Mr. **Ollie Munier**, **PICL** Clerk, eight **(8)** hours overtime for October 31, 1973, at the rate of Position B-26.

5. Carrier shall **now** be required to compensate Mr. G. M. Brown, Yard Checker D-25, eight (8) hours at the pro rata rate of Position B-26 in addition to **compensation** received for October 31, 1973.

6. Carrier shall now be required to compensate Mr. R. R. Lewis, General Clerk C-27, eight **(8)** hours at the pro rata rate of Position C-27, in addition to compensation received for October 31, 1973.

OPINION OF BOARD: The issue of filling, temporarily, short time vacancies has been before this Board on numerous occasions. Recently, the precise issue involved herein, on this property and between the **same** parties has been considered by us in Award 20998 and **more importantly** Award 20983. In the latter Award the issue was the filling of a one day vacancy when there **was** no qualified extra **employee** available, **analogous to** the instant problem. As in the previous dispute, the parties have each cited several rules and a substantial number of previous awards in support of their contentions. As in the reasoning of Award 20983, we find that the language in the ratio-of-rates agreement which provides for "complete freedom" of work

assignment within the ratio, is persuasive. This language, however, as pointed out by Petitioner, does **not nullify** the phrase in the Ratio Agreement which provides that "schedule roles covering assignments and bulletins shall apply to these positions". Since we do not find Award 20983 to be palpably erroneous and do agree that we cannot **find** a specific contractual basis for the result desired by Petitioner, we **must** deny the claim on the ground of **res judicata**.

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:


Executive **Secretary**

Dated at Chicago, Illinois, this 14th day of June 1976.