

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21184
Docket Number CL-21160

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-7776) that:*

1. Carrier violated the Clerks' Working Agreement at Everett, Washington, by unilaterally removing a regular assigned employee from his regular position of D Clerk at Delta Yard to fill a vacancy on PICL Clerk position A-7 on December 28, 1973, rather than properly calling Claimant at overtime to fill the vacancy.

2. Carrier shall now be required to compensate employee, Mr. W. L. Blalock, A-5 PICL Clerk, eight hours' overtime at the A-5 rate of pay for December 28, 1973.

OPINION OF BOARD: The regular incumbent of position PICL No. A-7 at Everett, Washington, was sick on December 28, 1973. Carrier moved the Relief Clerk from his D-2 Yard Clerk position to work the vacancy after he had already worked an hour at that job. He was paid one hour overtime and eight hours straight time for the work that day; there is no dispute over his rate of pay. Claimant, who worked a different shift, contended that he was available on his rest time and should have been called at overtime for the assignment.

Petitioner's position is grounded on the theory that under the *Ruler, regular assignments should not be disturbed except as a last recourse - and there was recourse here in that Claimant was available during his relief time.* Petitioner relies on the second sentence of the sick leave rule, which provides in Section H:

"Rule 55. SICK LEAVE

H. It will be optional with the Carrier to fill or blank a position of an employee who is absent account his personal sickness, and is receiving an allowance under this rule. If the Carrier elects to fill the vacancy, ruler of the agreement applicable thereto will apply. The right of the Carrier to use other employee on duty to perform the duties of the position of the employee absent under this rule is recognized."

Roth parties agree that Carria exercised its rights under the last sentence "...to use other employer on duty to perform the duties of the position of the employee absent under this rule...." but disagree as to the applicability of other rules. This dispute with respect to the filling of short vacancies is the latest in a series involving the same issue, between these parties. All of these cases are concerned with the applicability and interpretation of the ratio of Rates Agreement which gives the Carrier, 66 quid pro quo, "complete freedom in the assignment of Work...." in this situation (Awards 20975, 20983, 20998 and 21092). As we held in the earlier disputes we cannot find any contractual basis for the result desired by Petitioner: the claim must be denied 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 13th day of August 1976.