

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21233
Docket Number CL-21190

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO: DISPUTE: (Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, GL-7810, that:

1. Carrier violated the Agreement between the parties when they arbitrarily reduced the work week of D. W. **Garman** by denying him work on October 26 and 27, 1973.

2. Carrier shall pay claimant **two** (2) days' pay.

OPINION OF BOARD: Claimant was regularly assigned to Position No. 363 with rest days of Sunday and Monday. On October 25, 1973, he was advised that he was the successful bidder on a janitor position with Saturday and Sunday designated as rest days. Claimant states that he was ordered not to report to Position 363 **on** October 26 and 27; but to report to his new position on October 29. As a result, **Claimant** lost pay for two days and he submits this claim asserting a violation of Rule 42:

"RULE 42 - WORKWEEK

'Nothing herein shall be construed **as** permitting the reduction of days for regularly assigned **employees** and/or positions below five **per week** except that this number may be reduced in a week in which one of the specified holidays, as listed in Rule-40(a), occurs within the days constituting the assignment and/or position to the extent of such holiday, or unless agreed to by the Management and the General **Chairman.**"

On the property, Carrier conceded the basic facts alleged by the **employee**, but stated that when he was advised that he was the successful **applicant** for the **new** position; the previous position no longer belonged to him and it was advertised as a vacancy, and thus, he could not work it on the two claim dates.

In its presentation to this Board, Carrier cites Rule 12(a):

RULE 12 - BULLETINING NBW
POSITIONS OR VACANCIES

(a) **Except** as otherwise provided in this rule, all new positions and vacancies (except those of thirty calendar days or less duration) will be promptly bulletined for a period of five working days in the **seniority** district affected as specified in Rule 2, bulletin to show **position**, location, assigned hours, meal period, days, assigned rest days, rate of pay and primary duties.

Employees desiring such new positions or vacancies will file their written application with the official designated on the bulletin and furnish a copy of the application to the Local Chairman within the specified **time** and assignment will be made within five working days thereafter. The **name** of the successful applicant will **immediately** thereafter be posted **where** the **new** position or vacancy **is** bulletined. An **employe** awarded a bulletined position will be transferred to such assignment within five working days after issuance of assignment bulletin or paid the rate of the **position** held or the position awarded whichever **is** the greater. (The five-day bulletin period **may** be changed when agreed to locally.)

NOTE: When necessary for an **employe** to mail copy of application to the Local **Chairman**, it shall be sent U.S. Mail.

and **asserts** that compliance with the cited **rule** caused the result which led to this claim. Moreover, Carrier note8 that it also complied with **Rule 11** concerning Position 363:

"When an **employe** bid8 for and-is awarded a bulletined position, his **former** position will be bulletined or abolished in accordance with the mles of this agreement."

and it assert8 that during the advertising period, Position 363 was filled by extra **employees**.

Carrier also notes that the reason **Claimant** could not **commence** the new assignment on October 26, 1973 **was** due to the fact that he worked his old position from **11:45** p.m. on October 25th through **7:45** a.m. on October 26; whereas the shift starting **time** for the new position **was** 6:00 a.m. on the 26th.

Certainly, we agree with the number of Award8 cited by Carrier **which** preclude this Board from re-writing the rules of Agreements, or injecting our "**predilections** a8 to what **is** fair, just and equitable." But, a sustaining Award here doe8 violence to none of the Awards cited by Carrier.

Surely, it is necessary to consider all rules when an action is taken, and when that action is under review and scrutiny by this Board. Basically, Rule 42 does not permit a reduction of **days** for regularly assigned **employees** and/or positions below five per week. In order to **permit** the results herein, we require a clear **showing** that **some** other **provision** of the **Agreement** dictates such result, and we are unable to find such a showing. On the property, there was reference to a "practice here at **Bellevue**" concerning **re-advertising former** positions, but we do not find mandatory contractual language. In short, we find nothing to suggest that Carrier could not have complied with the Agreement **requirements** concerning the filling of Position 363 **in an** orderly fashion, and at the same time, permit Claimant **to continue** working in such a manner so as to avoid the loss of two days' pay. We do not feel that said result rewrites the Agreement in any manner, but rather, it gives effect to the Agreement considered as a whole.

Although the issues are not precisely the same, we feel that the results herein are consistent with Award 19622. We do not view Award 17550 as being pertinent to this case.

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** violated.

A W A R'D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST: *aw. pauls*
Executive Secretary

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