

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21443
Docket Number CL-21313

James C. **McBrearty**, Referee

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

PARTIES TO DISPUTE: (

(**Houston Belt & Terminal Railway Company**

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood
(GL-7945) that:

1. The Carrier violated the Clerks' Agreement by failing and refusing to fill the position of Route Clerk **409** as prescribed in Rule **24** of the Clerks' Agreement.

2. That Mr. C. J. **Butaud** be compensated for eight **(8)hours** at punitive rate of Route Clerk, or **\$63.90** each day, December **28** and **29**, 1974.

OPINION OF BOARD: Claimant is regularly assigned to Route Clerk Position **403**, with assigned hours **7:00 A.M.** to **3:00 P.M.**, and rest days of **Friday** and **Saturday**.

A one **Mr. C. E. Phillips** is regularly assigned to **Route Clerk** Position **409**, with assigned hours **11:00 P.M.** to **7:00 A.M.**, and rest days of **Monday** and **Tuesday**.

On **Saturday** and **Sunday**, **December 28** and **29**, 1974, Petitioner alleges that **Mr. Phillips** was off due to personal reasons, and was not **compensated** in any **manner** for those two days.

Since there were no qualified extra board **employees** available to work **the temporary** vacancy at the pro rata rate, Petitioner alleges that Claimant, being the senior available **qualified** employee to fill the **vacancy**, should have been **called**. Carrier did not **call** Claimant, but, instead, blanked the position on the two days involved.

Claim was filed and handled in accordance with the **procedural** requirements of the current **Agreement** between the parties, up to and including the highest officer designated for that purpose, discussed extensively in conference, and upon final denial is properly before the Board for adjudication.

The parties have cited the following rules of the **Agreement** as being relevant to the instant case:

"RULE 10 - BULLETINS

(a) All new positions and vacancies will be bulletined within three (3) days after being created or becoming vacant. The bulletin will be posted on bulletin boards in each office and will show location, title and description of the duties, assigned hours, days, meal period and rate of pay.

(b) Employees desiring such positions will file their applications with the official designated on the bulletin and Local Chairman within five (5) days from date of bulletin, and senior applicant will be assigned within three (3) days thereafter. Assignment will be posted in the same manner and places as the original bulletin. If an employee is absent, by proper authority, during the time a position or vacancy is under bulletin, he may, if a junior employee is assigned, exercise seniority rights to such position or vacancy within three (3) days after return.

(c) Employees awarded bulletined positions will be transferred to such assignment within five (5) days after issuance of assignment bulletin. Employee not transferred within the five (5) day period will be paid the rate of the position awarded and in addition thereto will be allowed \$3.60 per day for each day held off the assignment beyond the five (5) day period. Employees not transferred will continue to observe conditions of assignment they occupy.

(d) Bulletins will be numbered consecutively, beginning with number one on the first of each year. The assignment will bear the same number as the bulletin with the suffix 'A.'

(e) Employees will go on and off duty at same location.

(f) Two (2) copies of all bulletins, assignments, and changes will be furnished to the Local Chairman and District General Chairman.

"RULE 11

TEMPORARY ASSIGNMENT

Bulletined positions will be filled temporarily pending an assignment by the senior qualified employe desiring the position and, in the event no applications are received from employes covered by this agreement, the assignment may be made by appointment.

RULE 12

SHORT VACANCIES -
RELIEF OR EMERGENCY WORK

(a) Positions or vacancies of less than thirty (30) calendar days' duration shall be considered short Vacancies and may be filled without bulletining under provisions of Rule 24.

Where there is reasonable evidence that such vacancy or position will be longer it shall immediately be bulletined, showing, if possible, probable duration.

(b) Regular assigned employes will not be required to perform relief work, nor to work at wrecks, washouts, etc., except in case of emergencies, and in such case, shall not suffer a reduction in their regular hourly rate of pay, and will in addition, be reimbursed for any necessary expense incurred on account of the change. If the temporary assignment pays a higher rate than their regular position, the higher rate will be allowed.

RULE 24

EXTRA BOARD

(a) All temporary vacancies caused by regular assigned employe laying off and/or due to Vacations will be filled by the rearrangement of the remaining regular assigned force in that office, with senior employes being given their choice.

"(1) 'in that office' as used in this paragraph
(a) means:

- (1) South Yard
Congress ~~Avenue~~ Yard
~~Basin~~ Siding
~~Dollarup~~ Yard
- 2) ~~HB&T~~ Offices Union Station
Republic Warehouse and
Booth Yard
- (3) Settegast Yard
- (4) Rusk Avenue
- (5) Tower 80
- (6) Tower 85

(2) Rearrangement of the remaining regular assigned
employees as used in this paragraph (a) means employees
assigned to position whose starting time of assignment
and the vacancy begin with the following hours:

6:00 a.m. to 8:00 a.m.

2:00 p.m. to 4:00 p.m.

10:00 p.m. to Midnight

* * * * *

(b) Vacancies left after rearrangement of the
remaining regular assigned employees will be filled
from the extra lists hereinafter provided.

* * * * *

(1) When the extra board is exhausted, or for
other reasons, it becomes necessary to ~~fill~~ temporary
short vacancies by 'doubling' regularly assigned
employees or working them on their rest days, the
senior available qualified ~~employee~~ desiring to ~~fill~~
the vacancy is entitled to do so provided they have
complied with the provisions of this paragraph.

* * * * *

"(m) In case there is a vacancy on a position governed by the Hours of Service Law which cannot be **filled** under the above provisions of this rule, such vacancy **may** be filled by any of the following:

(1) Recall qualified extra employees off under Paragraph (f) of this rule.

(2) **Occupant** of position preceding the shift on which the vacancy occurs, and the occupant of the position following the shift on which the vacancy occurs **will** divide the overtime.

(3) The junior qualified available **employee** **will** be called to fill the vacancy and **will** be compensated at the punitive rate of position filled. If time is lost when returning to his regular assignment due to Hours of Service Law, then he will be compensated at pro rata rate for time lost on regular assignment."

The crucial part of Rule 24 which is applicable to this case is **Paragraph (1)**. Paragraph (1) of Rule 24 clearly states that "when . . . it becomes necessary to fill temporary short vacancies by 'doubling' regularly assigned employees or working them on their rest days, the senior available qualified employee desiring to fill the **vacancy** is entitled to do **so**."

Paragraph (1) of Rule 24 cannot properly be construed as prohibiting the blanking of a **temporarily vacant** position. It specifies the method to be used in selecting the replacement by "doubling" regularly assigned employees, or working them on their rest days. This becomes applicable, however, only after the Carrier exercises its managerial prerogative to fill a **temporary** vacancy (Awards 17262, 17434, 15979, 14252 and 12358).

Award 10849 is not controlling in the instant case, because Rule 25, cited by the parties in Award 10849, is not the same language as Rule 24 in this case.

The phrase "**when** the extra board is exhausted, or for other reasons, it **becomes** necessary" clearly implies a **managerial** judgment must be **made** to determine necessity. Therefore, the claim **must be dismissed**.

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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1977.

