

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIMENSION

Award Number 21639
Docket Number CL-21459

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers, Empress and
(Station ~~Employees~~
(
(Penn Central Transportation Company

STATEMENT OF CLAIM: Claim of the System ~~Committee~~ of the Brotherhood (GL-7992) that:

- (a) Carrier violated the Rules Agreement effective February 1, 1968, particularly Rule 4-C-1 and other rules as well as the Extra List Agreement, when on May 6, 1973, it arbitrarily removed Claimant D. E. Rasile from his regular assignment and required him to work the first trick Yard Clerk position in order to avoid the payment of overtime at Alliance, Ohio.
- (b) Claimant D. E. Rasile now be allowed eight (8) hours' pay at the appropriate punitive rate of pay for May 6, 1973 account of this rule violation.
- (c) This claim has been presented and progressed in accordance with Rule 7-B-1 and should be allowed.

OPINION OF BOARD: The issue posed is whether a clerk can be assigned the duties of another clerk position for a day without ~~running~~ afoul of the agreement.

Claimant, D. E. Rasile, held the position of clerk G-213, Alliance Yard, Ohio, first trick, with Friday and Saturday rest days. The holder of yard clerk position No. G-212, was absent due to illness from April 30 to May 11, 1973, and the vacancy was being **protected** by an extra list **employee**. The work week of No. G-212 was Monday through Friday with Saturday and Sunday as rest days.

On Sunday, May 6, 1973, to cover an extra yard crew assigned that day, claimant was pulled from his regular position to perform work which would normally be done by the G-212 clerk. Claimant had to catch up his own work on Monday. The **employees** claim this was a ruse to **avoid** paying overtime, contrary to Rule 4-C-1, which reads:

"ABSORBING OVERTIME

Employees will not be required to suspend work during regular **hours** to absorb overtime."

The Union also cites Rule 4-A-1 **DAY'S WORK AND OVERTIME**, Subsection **(f)**:

'Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

and Rule 5-C-1 EXTRA BOARDS, the Union stating that these rules required the Carrier to pick somebody besides Rasile for the job and pay overtime.

As to Rule 4-C-1 ABSORBING OVERTIME, the Carrier points to Article VI of the February 25, 1971, Clerks National Agreement, which reads:

"ARTICLE VI - ABSORBING OVERTIME

Insofar as concerns employees covered by the Clerks agreements on the individual railroads the following shall apply effective as of the date of this agreement:

"Employees **will** not be required to suspend work during **regular** hours to absorb overtime.

Note: Under the provisions of this rule, an employee may not be requested to suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an employee cross craft lines to assist another employee. It is the intention, however, that an employee may be used to assist another employee during his tour of duty in the same office or location where he works and in the **same** seniority district without penalty. An employee assisting another employee on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing rules which provide for payment of the highest rate for entire tour of duty will continue in effect. An employee assisting another employee on a position paying the same or lower rate **will** not have his rate reduced."

The above Note is said to supersede and settle questions raised by predating opinions cited by the Union, notably **Third** Division Awards 131.58 and 8563. We agree. The Note clearly precludes claimant from complaining about being **suspended** from his own work to absorb overtime of another, the rule being limited only to overtime "earned by him." See Third Division Award No. **16611**. The

note is also of general pertinence in discussing use to assist another employe. **The Union member** cites **Third** Division Award No. 21578, which post-dates the February 25, 1971, agreement, but we find this case to be inapposite.

The Carrier cites **Rule** 4-E-1 as recognizing the propriety of making temporary assignments:

"4-E-1 PRESERVATION OF RATE

(a) **Employees** assigned temporarily or permanently to higher rated positions **will** receive the higher rates while occupying such positions; employees assigned temporarily to lower rated positions **will** not have their rates reduced. Extra employees will be compensated at the rate of the position to which temporarily assigned.

(b) A 'temporary assignment' for the purpose of this **rule** (4-E-1) **contem-**plates the fulfillment of all the duties and the assumption of all the responsibilities of the position during the time occupied, whether the temporary assignee does the work in the presence of the regular employe. Assisting a higher rated employe, due to a **temporary increase** in the volume of work, does not constitute a temporary assignment."

The Union discounts this as merely a rate preservation **rule** having little to do with assignments. We do not agree. The rule does not specify when temporary assignments may or may not be made but it certainly recognizes their existence on the property.

The **Employees** urge **Rule** 4-A-1(f) as compelling work on unassigned days to be performed only by those specified therein. **They** point out that Sunday was a rest day for G-212 and, thus, was unassigned, Carrier **responds** that the day was assigned for claimant and it was merely exercising its

managerial prerogative in temporarily putting him on other duties. we do not read Rule 4-A-1(f) or the extra list agreement **pursuant to Rule** 5-C-1 as prohibiting Carrier *from* shifting duties as it did. The purpose of these rules is to govern priority of overtime or extra work assignment when such assignment is made.

In ~~sum~~, the agreement is simply nonspecific and inconclusive on the points raised. That being so, we must conclude that the underlying right of management to assign duties as it sees fit has not been delimited by contract. At one point the Erotherhood concedes that it would have been better had the owner of position G-212 or an extra assignee brought the complaint, but to maintain the integrity of the agreement **urges** this board to sustain. We fully appreciate the importance of absorbing overtime and assignment rules **and** will not hesitate to **enforce** them in a proper case. But we cannot expand the contract to create rights and duties **not** mutually **intended** by the parties.

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

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 29th day of July 1977.