

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21689
Docket Number CL-21427

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Robert W. Blanchette, Richard C. Bond and John H.
(McArthur, Trustees of the Property of Penn Central
(Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7977)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 4-A-1 (f), 4-C-1 and other Rules, as well as the Extra List Agreement when it failed and refused to call and work Claimant G. Dickson on Position #431 - hours 3:00 P.M. to 11:00 P.M. - located at Collinwood Yard, on March 11, 1973 and instead assigned and permitted J. Moran, Jr., to perform the duties of Position #431 while he was assigned to Position #702 at Collinwood Yard.

(b) That Claimant G. Dickson now be allowed eight (8) hours pay at the appropriate punitive rate of pay of Position #431 for March 11, 1973, on account of the Carrier assigning and permitting J. Moran, Jr., to perform the duties of Position #431 on March 11, 1973.

(c) Claimant is qualified, was available and should have been called and worked.

(d) This claim has been presented and progressed in accordance with Rule 7-B-1 and should be allowed.

OPINION OF BOARD: Claimant was regularly assigned to a third shift clerical position (No. 681.) in the Collinwood, Ohio Yard (11:00 p.m. to 7:00 a.m. - Wednesday and Thursday rest days).

On Sunday, March 11, 1973, the second shift clerical position identified as No. 431 (which was the subject of advertisement for bid) in the "Brick Yard Office" was vacant. Carrier unsuccessfully attempted to fill the vacancy (at straight-time rates) from the extra list, then filled same by re-assigning Moran, the regular incumbent of second shift position No. 702. Position 702 was allowed to remain vacant.

The Claimant states that Rule 5-C-1 (extra boards) and the Extra List Agreement specify the method to be employed in filling the vacancy at issue, and that Carrier had **no** authority, **under** that Agreement, to require Moran to give up his regular assignment and perform the service on Position 431. Rather, Claimant asserts that had the Carrier followed the agreed-upon procedures (when there were no extra list employees available at the straight-time rate) it was required to use **him** as the "senior available regularly assigned or extra list employee" to fill the vacancy.

Claimant also asserts that Carrier's action violated Rule k-C-1:

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

because, **Moran's** suspension of Position 702 was dictated so as to defeat a payment of overtime to Claimant.

Carrier denies a violation and asserts, regarding the 'contractual provisions cited by **Claimant**, the following. As it relates to **Rule 4-A-1 (f)**, there was no violation (and no rational explanation of why **Claimant** suggests that it is material to this dispute) because the day in question was part of a regular assignment, i.e., Position No. 431.

As it relates to **Rule 4-C-1 "Absorbing Overtime"**, Carrier asserts that we can find no violation concerning this Claimant because of the "Note" appended to the "Absorbing Overtime" **Rule** in Article VI of the February 25, 1971 Agreement:

"...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." (underscoring supplied)

Thus, reasons Carrier, regardless of prior pronouncements of this Division, the 1971 Agreement clarifies that the absorbing overtime prohibition is solely directed at and to the individual employee - and not to a situation such as this.

This Board feels that Carrier's contentions, as stated above, have merit, so that a disposition of this dispute **must** be controlled by the allegation that the Extra List Agreement was violated. Claimant relies upon Article 12 of that Agreement, which article refers to "extra work-not part of any

assignment." Carrier asserts, as it did concerning Rule 4-A-1 (f), that the work in dispute was part of Position No. 431.

In the Rebuttal Brief, the Claimant makes further reference to the Extra List Agreement and asserts that Articles 10(b) and 13 dictated that Claimant, rather than Moran, should have handled time assignment to Position 431.

Quite apart from the conclusions to be drawn from the parties' divergent views of the import of the rules provisions discussed above, the Board finds that Claimant did not present - while the matter was under review on the property - factual matters which demonstrate his particular entitlement under Article 4 of the Agreement, or the Extra List Agreement.

This Board is aware of Claimant's regular position, his hours and rest days, and the assertion that he was "available." Nonetheless, Carrier did not, either on the property or before this Board, contest that this Claimant was the appropriate employee to seek relief, if a violation were demonstrated. Accordingly, we will presume that he possessed all pertinent qualifications, seniority, etc.

As we read Article 12 of the Extra List Agreement, that portion of it which refers to work "not a part of any assignment" deals with the identity of the employee who is to be offered the work, but it does not dictate that the Agreement provisions are not applicable. The Carrier, itself, made an initial determination to fill Position 431 from the extra list on the claim date. Thus, under the provisions of the Extra List Agreement, it was committed to a course of providing coverage, at the punitive rate, if straight time coverage was not available under the Agreement. Accordingly, the claim is sustained.

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 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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of August 1977.

