

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21815
Docket Number CL-21817

John P. **Mead**, Referee

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

PARTIES TO DISPUTE:

(**Soo** Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
668270, that:

(1) Carrier violated the Agreement between the parties effective July 1, 1968, when it arbitrarily **removed** the incumbent from the position of Hold Track and **Disposition** Clerk and assigned him to work the position of Yardmaster Clerk on **January** 30, 1975.

(2) Carrier shall now compensate Claimant **Wayne** T. Ring for 8 hours at the rate of time and one-half for **January** 30, 1975.

OPINION OF BOARD: On January 30, 1975, **Yardmaster** Clerk Sherman was absent on personal business. His work was **performed** by reassigning **Hold** Track and **Disposition** Clerk Walker, whose work was either done by Card Switching Clerk **Trasco** (according to Carrier) or **was** done by other **employes** (according to Organization). **Trasco's** position was blanked, according to the Carrier.

This realignment of duties eliminated the need for any overtime work. Claimant Ring, Assistant Chief Clerk, who was **on** his days off, contends Walker's reassignment violated the agreement and deprived Ring of overtime to which he was entitled as the senior qualified available **employee**.

King's initial request of February 5, 1975 cited Rule 17, Short **Vacancies**, as entitling him to the work, and quoted paragraph **(b)(1):** "By the senior **qualified** employee in the immediate office or station **making** request upon the proper officer, when it will not seriously disrupt the force." It also said Walker's **position** had been blanked.

Carrier's denial of February 19th pointed out that no one had been paid overtime, stated that Walker's position had **not** been blanked, and that blanking of another position had not disrupted the force or caused any problems.

Cited contractual support of Claimant's position and for Carrier's denial has expanded as the case progressed.

On February 25, 1975 Claimant requested Carrier to identify the Rule under which the claim was being disallowed, and reiterated the basis for his claim: "In the past Short Vacancies, have been filled by the senior **Employee**, requesting this Overtime."

Carrier's February 28 reply again points out that no **overtime** was paid, and also cites Rule 50, reading: "**No overtime** will be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable."

Ring's letter of March 25th again cited the past practice at that location as justifying his claim, that practice **being** "in that at any time and **sic** Assignment is open due to a person or persons laying off due to personal problems, this vacancy is to be filled as a Short Vacancy under the Short Vacancy Rule."

Following Carrier's April 16 continued denial, the matter was appealed on June 9, 1975. In the appeal letter, the Organization's General Chairman alleged violations of "Rules 17, 51 and others" and referred to Awards No. 13158 and 16612 as **supporting** its position.

Carrier's denial of the appeal on August 7 distinguishes the facts in 16612, **and** disagrees with the conclusion in 13158. It further cites Awards 13192, 13218, 15406 and 16851 as supporting its position that the rule against absorption of **overtime** had not been violated. The carrier then cites Rule 55 as permitting the transfer of Walker.

In its Rx Parte Submission Petitioner does not advance **King's** original claim of entitlement under Rule 17, but contends that when Rule 17 procedures were **exhausted, King** "was entitled to be utilized as provided in Rule 49(h)." It also alleges violation of Rule 51.

In Carrier's Submission it denies entitlement under Rule 17 and denies violation of Rule 51, citing prior awards referred to in the August 7 appeal denial, and others.

In Petitioner's Reply to Carrier's Submission it states: "**Claimant** should have been utilized in accordance with Rule **17(d)**. Additionally, Claimant should have been utilized in accordance with Rule **49(h)...**" It also disputes Carrier's right to **move** Walker from his regularly assigned position to fill in for the absent **employe**, claiming that this violates Rule 51, which had first been cited in the Organization's appeal on **June** 9, 1975.

The Carrier's reply to Rmployes' Submission denies violation of Rules 51 and 49(h), and **again** cites Rule 55 as supporting Carrier's right to **make** temporary transfers of the sort here involved.

Both parties recognize Sherman's absence as a Short Vacancy falling within Rule 17(b). Raving made no request, Claimant cannot justify his grievance upon this provision.

Do the other cited agreement provisions require the creation of overtime work for Claimant, or prohibit the Carrier from making the **reassignments** which avoided overtime?

Rules 17(d) and 49(h) relied upon by Petitioner are both directed to prescribing rates of pay if certain work is **performed**, and do not specify when such work will be **performed** or by whom. The **same** is true of Rule 55 injected into the Carrier's argument in its August 7 appeal denial. Also, Rule 50, cited in Carrier's second denial of the claim, is inapplicable since no **overtime** was worked, and the question remains: 'Was the Carrier justified in not authorizing **overtime**?"

Unless the Carrier's work realignment violated Rule 51 the Claim must be denied. Examination of the arguments and cited decisions in the record do not establish such a violation, in this Board's opinion. None of the **cited** cases has facts identical with the present case, and **arguments** of both parties point out the significant variations. None of these cases, however, hold that the Note to Rule 51 expressly prohibits the reassignment of an **employee** to perform other than his regular duties during hours. **Walker** did not "suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime earned by him." Failure to mention this type of transfer in the **agreement** as one which is permitted does not constitute a prohibition, and the Board finds no violation of Rule 51 or the Notes thereto.

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 Rmployes involved in this dispute are respectfully Carrier and Rmployes 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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: aw Pauls
Executive Secretary

Dated at Chicago; Illinois, this 16th day of December 1977.

