NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22068
THIRD DIVISION Docket Number SG-21413

Robert J. Ables, Referee

PARTIES TODISPUTE: (Brotherhood of Railroad Signalmen
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[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 General Committee of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company - Lines East:

Case B.R.S. E-8

On behalf of Leading Signal Maintainer E. Kempel, Section 9 Spuyten Duyvil, N. Y., for eight hours straight tine pay for each day, April 8, 9, 10, 11 and 12, 1974, account Maintainer P. McComish being on vacation and his position as first trick mintainer not covered, ttis causing Mr. Kempel to be responsible for and perform the work and duties of both himself and the vacationing maintainer, this in violation of Section 6 of the Vacation Agreement and Section 10 thereof as it pertains to Section 6.

OPINION OF BOARD: This is a claim for pay under the National Vacation Agreement by a leading mintainer because the carrier blanked a maintainer job while the incumbent was on vacation for five days, resulting in additional work and burden for the claimant.

In the week starting April 8, 1974, on the first trick, the signal work crew consisted of a leading signal maintainer, a signal maintainer and a signal helper.

In the absence of the mintainer and because the helper was not qualified to perform signal maintenance work, the only employe left to do signal maintenance work was the leading signal mintainer, claimant in this dispute.

Claim

The claim is for eight hours straight time pay for the five days in issue. The basis for the claim is that the carrier violated Articles 6 and 10(b) of the National Vacation Agreement of December 17, 1941.

Contract Provisions in Issue

Article 6 provides:

"6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

Article 10(b) provides:

"10(b). Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

Positions of the Parties

The organization argues that: (1) there was additional burden on the leading signal maintainer because he had to assume the duties and responsibilities of the vacationing maintainer and any degree of additional burden caused by the carrier's failure to provide a vacation relief employe is a violation of Article 6; and (2) even if it were accepted that the carrier had a 25% leeway on burden, in accordance with the provisions of Article 10(b), the claimant, working alone, had at least a 33 1/3% increase in burden.

The carrier argues that: (1) no added burden was placed on the leading signal maintainer because he was required to perform only signal maintainer's work in the time he was on the job; (2) "although claimant performeda portion of the duties normally performed by the vacationing maintainer, he was not required to perform more than 25% of the normal workload of that vacationing employee"; and (3) the organization failed to meet its burden of proof, "in that it has not furnished any positive evidence" on the resulting work 'burden on the claimant.

Referee Morse's Interpretations

These examples of denial of claims on charges of violation of Articles 6 and 10(b) of the National Vacation Agreement indicate the dilemma which has existed since 1941 when the agreement was reached. The dilemma has been how to judge if the employes are "making" work or if tie employer is taking advantage of a vacation absence by hot filling the job and expecting the other employes to pick up the slack.

It is not as though no one recognized the difficulty when the agreement was reached. Referee Morse, who was on both the Emergency Board leading to the National Vacation Agreement and who was called in as the neutral to officially interpret the agreement once reached by the parties, was very deliberate and careful to spell out the positions of the parties acd to give his opinion - which, in many cases ; was that this was an agreement which could work only with the good faith of the parties. Morse, however, decided that the burden would be measured by whether an employe was reasonably able to do the work, considering the increased responsibility he assumed by picking up the slack of the employe oc vacation. On the question of meaning to be given the word "burden" in Article 6, he decided it should be taken ic its ordinary sense which is to "overtax" or to "oppress". As to how this would be determined, however, Morse concluded the question is one of fact "which would have to be determined in the light of the particular circumstances of the cases".

The facts supporting the claim are that the absence of the maintainer left only one qualified signal maintenance man to do the required work. It may be fairly accepted that if one classified employe on a job which requires seven days a week, around the clock, coverage is required to do work for a period of a weeb which is normally covered by two employes in that classification, the employe remaining on duty has an additional burden in performing his work. The opposite inference would be that there was not need for two classified employes to do the work in the first place and no such inference is justified under the facts or the way in which tie carrier assigns employes to do the required work. Thus, it may be accepted that the burden was increased on the claimant.

But the question remains, was that burden oppressive or was it such to overtax his ability to do the job. Neither the claimant nor the organization presents direct evidence on this point. Thus, there is insufficient basis to conclude that claimant was burdened to the extent required under the agreement to sustain the claim.

The arguments by both sides on Article 10(b) are irrelevant to this dispute.

There is a surface relationship between the requirement in Article 6 concerning burden and the provision in Article 10(b) concerning distribution of the work to a maximum of 25%; however, Article 10(b) is a pay provision and applies in a situation where the carrier spreads the work among two or more employes. In this dispute, the burden - whatever degree of burden it was - fell on the one remaining employe and there is no way to apportion the amount of burden that the remaining employe sustained since be did all the signal maintenance work.

Since Article 10(b) is not related to this dispute, there is no 'basis to sustain the claim under this provision of the National Vacation Agreement.

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 cot violated.

A W A R D

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.