

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22674
Docket Number CL-22508

James F. Searce, Referee

(Brotherhood of Railway, Airline and
(Steamship **Clerks**, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8562) that:

1. Claim is hereby presented to the Company in behalf of Claimant Dale E. **Kenny**, Clerk, seniority date 1-2-73, account the Carrier violated the **Rules** Agreement effective July 1, 1972, particularly Article 8(a) and others, When it assigned and **permitted Takeela** Coates, Clerk, seniority date 8-11-75, to perform the duties of Clerk, in the absence of E. E. **Wiseman**, tour of duty **12:00** Midnight to 8:00 A.M., on the following dates, April 9 and April 16, 1977, located in the Car **Foreman's Office** at the Transportation Building, Union Station.

2. Article 8 states in part: "**Day to day** vacancies occasioned by the absence of a regularly assigned employee shall be filled.... Second: By the senior qualified available regularly assigned employee desiring work."

3. **Claimant** Dale **Kenny** be allowed two days sixteen (16) hours at time and one-half rate of pay for Saturday, April 9 and Saturday, April 16, 1977, that the Carrier assigned and permitted Takeela Coates to perform these duties. Claimant is qualified, Was available, **and** should have been called and **worked**.

OPINION OF BOARD: The record in this case shows that on the dates **in** question a vacancy existed on the **12:00 A.M. - 8:00 A.M.** Car Foreman Clerk's position. To fill this vacancy on each date, Carrier used the regular assigned Belief Clerk at the Car Foreman's office by "doubling" her over from her regular **assignment** on the 4:00 P.M. - 12:00 A.M. shift. The claim that **we** now have before us for resolution is from a senior employee who was on his rest day **from** his regular assignment **7:30 A.M. - 4:00 P.M.** in the Coach Yard Stores Department.

There is no contention in this record challenging the qualifications of the claimant. Bather, Carrier defends their actions on the basis that, under the provision of prior agreed-upon understandings and

practices, day-to-day vacancies of this nature were to be filled by **employees** who held regular positions "at the location where the over-time occurs. "

In this regard, Carrier points out that prior to the consolidation of the Clerk's and Telegrapher's Rules Agreements effective July 1, 1972, there existed an agreed upon understanding of the then existing Rule No. 32 between the Clerks and Carrier dated August 18, 1959, which specifically provided that the proper application of the phrase "by the senior qualified available regularly assigned employe desiring the work" as used in the Interpretation of Rule 32 in the Clerk's Rules Agreement was subject to the following:

"It was further understood and agreed that in order to be considered 'available' for **doubling**, an employe must hold a position at the location where the overtime occurs. "

Carrier further posits that, when the separate Rules Agreements (**BRAC-TCEU**) were consolidated in 1972, the organization elected to retain Rule 32 in its entirety from the former Clerk's Agreement, and, therefore, the agreed upon understanding as outlined **above** was also retained as part of the new Rules Agreement and has, in fact, been applied by Carrier as written in 1959 without challenge from the organization since July 1, 1972.

Petitioner argues that nowhere in the revised Rules Agreement of July 1, 1972 is there any reference to or memorialization of the August 18, 1959 understanding. Rather, all that is found **in** the revised Rules Agreement is the clear and unambiguous language of Article 8 and its Interpretation which requires **in** situations such as exist here the use of "the senior qualified available regularly assigned employe desiring the work."

This Board has long recognized the elementary rule of law that the readoption of a Rule *without material* change carries with the Rule the interpretations and understandings which have been placed thereon by the parties in applying the Rule (see Third Division Award Nos. 4791, 12644 and 16489). That rule is not changed hereby. However, in this case, Carrier has not shown any examples of continued practice under the 1959 **understanding**. We have, on the other *hand*, **been** given information by Carrier which clearly shows that, on September 14, 1972,

following the revision of the **Rules** Agreement effective July 1, 1972, the parties specifically agreed that:

"Except where applicable extra list agreements provide otherwise:

(1) The word 'available' in the phrase in Article 8, '**Day-to-Day Vacancies; How Filled**,' reading:

'By the senior qualified available regularly assigned employee desiring the work.'

shall be **contrued** (sic) to mean available in strict seniority order."

This September 14, 1974 understanding is clear and **unambiguous**. It applies "strict seniority order" to the filling of day-to-day vacancies **under** the provisions of Article 8. Inasmuch as that was not done in this case, we have no **recourse** but to sustain this claim.

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.