NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22768
THIRD DIVISION Docket Number CL-22154

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (668395) that:

"(1) Carrier violated and continues to violate the rules Of the Agreement, when on Saturday, June 19, 1976 they failed to allow Mr. B. Salazar, the senior Truck Loader signing the availability list, to work four (4) hours overtime performing duties regularly assigned to a Truck Loader, i.e., waxing the floor in the lunch room,

(2) Carrier shall now be required to compensate Mr. B. Salazar two (2) hours at double time and two (2) hours at time and one-half, the truck loader rate, for Saturday, June 19, 1976."

OPINION OF BOARD: This case is concerned with the wax-polishing of the floor of the lunch room of Freight House No. 10. The work, viewed by both parties as unskilled janitorial work, was performed on Saturday June 19, 1976 -- a rest day for both the employe who performed the work and the employe who is claiming it.

Among the classifications covered by Clerks' Seniority Roster No. 2 are those of Checker and Truck Leader. The former fetches a wage which is about $3 per day higher than that of the latter. The employe who performed the work was a Checker. The claimant was a Truck Loader.

On the prior Thursday (June 17, 1976), Management posted an availability list for the floor-waxing work. Both men were among those who signed it. The Checker was selected in preference to the claimant on the grounds of his higher seniority standing. He (the Checker) ranks as No. 339 on the roster. The claimant's rank is NO. 493.

The Organization is saying that Management erred in treating both Checkers and Truck Loaders eligible for the floor-waxing work. It contends that the waxing of the lunch-room floor on a rest day had by practice been made the work of Truck Loaders and that Management, accordingly, should have scanned the availability list for Truck Loaders only. It is concededly true that, had this been done, the claimant would have ended up being offered the work.

Rule 7 of the Agreement, titled "Notified or Called", reads as follows:

> "Employes notified or called for work not continuous with, before or after the regular work period, or on either of the consecutive rest days or on any of the holidays specified in Rule 8 shall be allowed a minimum of four (4) hours for two (2) hours' work or less and if worked in excess of two (2) hours, time and one-half will be allowed on the minute basis for time worked in excess of the first two hours.
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> Employes worked full day on rest days or holidays, will be paid under the terms of Rule 8.
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> Senior employes ordinarily performing type of work to be performed, shall be given preference over junior employes in assignment of work under this rule."

At issue is the proper application of the Rule's third paragraph. It is clear and undisputed that the terms of the paragraph ware complied with if Management was correct in proceeding on the premise that Checkers and Truck Loaders were equally eligible for the particular piece of work. Conversely, if the work stood as reserved for Truck Loaders, it is plainly true that the claimant, given the appearance of his name on the availability list and his seniority standing among the Truck Loaders who had signed it, would have been entitled to be offered to perform the work (and hence would be entitled to the reimbursement he is claiming).

Our ruling is against the Organization. Given the facts: 1) that the regular work of both classifications here involved is relatively unskilled, 2) that the occupants of both classifications do some sweeping and policing of their areas when not busy with their

regular duties, and 3) that neither position, as bulletined, carries a reference to janitorial work, it seems to us that the exclusion of Checkers (and perhaps other positions falling under the. seniority roster) from eligibility for the instant sort of rest-day opportunity would represent an artificiality. By natural expectancies, in other words, it would be surprising to find the Truck Loaders as alone holding entitlement to the work here involved. We are not saying, of course, that the creation of such exclusive right would be inherently wrongful and unenforceable. But we are saying that the Organization, to prevail in the assertion of the exclusive right, must be required to bring solid practice or local-agreement evidence as the proper foundation for the claim. Such evidence, we find, is lacking.

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 ***not*** violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.