NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23142

THIRD DIVISION

Docket Number m-23122

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (United Steelworkers of America, AFL-CIO
(The lake Terminal Railroad Company

STATEMENT OF CLAIM: "In accordance with the Railway Labor Act, as amended, please accept this as a formal notice of the Organization's intent to file its Ex-Parte Submission to the Third Division NRAB in dispute between the United Steelworkers of America and the Lake Terminal Railroad Company.

The dispute involves a violation of Rule 19(a) and 19(h) and requests the grievant be paid overtime pay for the hours worked."

OPINIONOFBOARD: Claimant worked as a laborer on the 7 a.m. - 3 p.m. shift on January 3, 1979. He also worked on the same day on the 3 p.m. - 11 p.m. shift as a burner, replacing the regular burner who had, on short notice, decided to take his vacation.,: Claimant continued to work the 3 p.m. - 11 p.m. shift as a vacation relief for one week.

On January 10, 1979, the same situation occurred. Claimant worked as a laborer on the 7 a.m. - 3 p.m. shift. He also worked as a burner on the 3 p.m. - 11 p.m. shift, replacing the burner who was on vacation. He continued to work as a vacation relief man for the burner for the remainder of a week.

The Organization argues that since claimant was assigned by Carrier to the 3 - 11 relief position and was forced to double over, he should be paid time-and-one-half when he doubled over rather than the straight time he was paid. It is claiming four additional straight time hour6 of pay for January 3 and four for January 10. The Organization bases its claim on the controlling Agreement.

"Rule 19(2) (overtime)

(a) Effective January 1, 1975, time in excess of eight (8) hours shall be considered overtime and paid for at the rate of time and one-half with a minimum of one (1) hour.

"Rule 19(h) (changing shifts)

(h) Employees changed from one shift to another will be paid overtime rates for the first shift on each change. Employees working two (2) or more shifts on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees Involved."

The Organization in Its ex parte submission and on the property argued that claimant doubled over. He worked more than eight hours in a single day and, therefore, under Rule 19(a), he is eligible for overtime payment for the second eight hours he worked. It also argues that claimant is also eligible under Rule 19(h) for overtime. Claimant was changed, by direction of Carrier, from one shift to another. Rule 19(h) states that he must receive time-and-one-half for the first shift worked on the changed schedule.

Carrier argues that Rules 19(a) and 19(h) do not apply in this use. Claimant bid an extra burner's job and, consequently, is required to fill in for burners when they am not at work.' Because he bid the job of extra burner, the last sentence in Rule 19(h) is controlling. It states "This will not apply when shifts are exchanged at the request of the employees involved".

Carrier also stated that it has been the practice to pay only straight time when a man doubled over under the circumstances present in this case. It finally argued that even If claimant had not bid the extra burner's job, there was a burner's job open because of a vacation. Carrier had a right to assign an employe to that position. Claimant was a qualified burner and he vas assigned to cover the job. The Rational Vacation Agreement and the interpretatio1 given it by Referee Morse clearly support Carrier's position. Article K(a) of the National Agreement states that Carrier shall not be economically penalized for allowing an employe to take his or her vacation. When asked to interpret this article, Referee Morse cited an example identical to the case before us. The Organization argues that the vacation Agreement does not apply because it contemplates regularly scheduled vacations, not unexpected vacations. In short, the Organization argues that the National Vacation Agreement does not apply to the instant case, while Carrier argues that it does.

The Board is of the opinion that the National Vacation Agreement does apply in this case and Its interpretation and application by the Board over the years must be applied. Claimant was assigned to fill in on the middle trick for a burner who was on vacation. Thus, the National Vacation Agreement is applicable. The point at issue here is whether the grievant should have been paid straight time or time-and-one-half for the two days he doubled over. The Issue is not whether Carrier had a right to assign him or whether he bid a relief burner's job or whether he was forced by layoff to be In the position he was In.

The Organization is contesting the rats of pay received by claimant when he worked the 3 p.m. - ll p.m. shift on January 3 and January ll as a vacatio relief. The Organization presented five awards to support its position in this case: 2nd Division Award 1422, 1959, 2488, 4265, and Third Division Award 17044.

A careful review of the Second Division awards cited reveals that these awards are not on point here. In each of those awards, Carrier reduced the force and assigned employes to other shifts. Vacation relief was not involved, as It is in the present situation. Third Division Award 17044, however, is pertinent and a statement made in that award about Referee Morse's interpretation of Article K(a) of the Vacation Agreement is on point. Referee Morse's Interpretation applies only to the transferral of an employe and that is the issue In this case. Even though Award 17044 was a sustaining award, Referee Ritter in that award acknowledged that Morse's interpretation of Article 12(a) was the correct one. When an employs is transferred to cover a vacation vacancy, no penalty pay is authorized. Given that fact and the plain reading of the Morse Interpretation of the Vacation Agreement, it is impossible for this Board to conclude that Carrier has violated the contract In the instant case.

Referee Morse, in his oft-quoted interpretation of the National Vacation Agreement, clearly stated that under the conditions that exist In the instant case (that is, Carrier transfers an employe to cover a vacation vacancy and a doubleover is involved), Carrier is not required to pay penalty pay for the second shift. The shift change language in the schedule Agreement is superseded by the National Agreement.

The Organization responded to Carrier's arguments concerning the Morse Interpretation of the Vacation Agreement for the first time In Its rebuttal that vas submitted as part of the submission to this Board. While it is not our policy to consider material not presented on the property, it serves no purpose for this Board to take that position in this case, given the fact that Carrier will be upheld. The Organization argues that Carrier's arguments concerning the vacation agreement are not appropriate in this case

because the Morse interpretation that Carrier has relied on is based on the fact that employes plan ahead to take vacations and replacements are regularly scheduled. This Board thinks that this interpretation of the Morse comments and the National Vacation Agreement is strained and should not go unrefuted.

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 am 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: C. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.