

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23157
Docket Number CL-22885

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8775)

1. The Carrier violated the effective Clerks' Agreement when it failed and refused to permit Machine Operator Frank J. Lane to fill the entire eight (8) hour assignment of the 4:00 P.M. to 12:00 Midnight Machine Operator's position on January 25, 1978.

2. The Carrier shall now be required to compensate Machine Operator Frank J. Lane four (4) hours' pay at the pro rata rate of his position as Machine Operator for January 25, 1978.

OPINION OF BOARD: On January 25, 1978, a regularly assigned employee on the 4:00 P.M. to midnight shift reported off sick, thereby creating a vacancy. Carrier covered that work vacancy by requiring incumbents of Machine Operator positions on the two adjacent shifts to work 4 hours each at the overtime rate. When the normal incumbent of the preceding shift waived the assignment, the Claimant - incumbent of the following trick - accepted the overtime assignment. He was assigned to work 4 hours of the vacancy, but he was not permitted to work the portion of the assignment which the incumbent of the preceding trick had waived. Rather, an Assistant Machine operator performed the duties regularly assigned to the vacant shift.

The Employees assert a violation of Rule 4 of the Agreement, and they assert that it requires that the Claimant should have been permitted to fill the entire 8 hours of assignment concerning the shift in question.

The Carrier denies a violation and refers to the fact that Rule 4 merely sets forth the method of assigning overtime when the Carrier determines that overtime is to be worked. It points out, however, that it does not require that vacancies be filled for the entire work shift when that work can be handled in another manner under the existing rules. Moreover, the Carrier
• By the Board in a Memorandum of Agreement permits the moving up of other employees to perform work on a given shift.

Our attention has been invited to two awards of this Division concerning vacancies which occurred prior to the vacancies in question. In Award No. 22921 (concerning the fall of 1977), this Division held that Rule 4 does not require that vacancies be filled for part or all of the shift if the work can be handled under existing rules, agreements or practice. Further, it notes that the mentioned Memorandum of Agreement permits an employee from the same shift to handle the duties of an absent employee through "move up procedures". Moreover, under the circumstances of that case, the Board did not find that employees were required to suspend work.

Award 23056 considered certain vacancies as a result of illness in November and December of 1977. Consistently, the Board ruled that Rule 4 did not require that vacancies be filled through overtime for part or all of the work shift when that work could be performed in another manner as per existing rules, agreements or practices, and Rule 7 was considered to be inapplicable.

We find that the cited Awards are pertinent to this dispute.

Accordingly, we will deny the 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 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 30th day of January 1981.