NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23215

THIRD DIVISION

Docket Number CL-22906

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8749) that:

(1) Carrier violated the Agreement in effect between the Parties when, on my 17, 18, 19, 20 and 21, 1976, Assistant Chief Clerk U.A. Connolly in Division Manager's Office Baltimore, Maryland, was assigned to fill the vacancy of (Category A) Chief Clerk to Division Manager position, who was on vacation, and vas refused compensation in accordance with Agreement Rules, and

(2) Because of such impropriety, Carrier shall now be required to compensate Assistant Chief Clerk W. A. Connolly, an additional eight (a) hours' pay ($71.85) for each date, May 17, 18, 19, 20 and 21, 1976.

OPINION OF BOARD: The Organization alleges in the instant case, that Claimant, W. A. Connolly, the incumbent Assistant Chief Clerk at Carrier's Division Manager's Office located at Baltimore, Maryland, was directed by the Superintendent of Yards and Agencies to fill the vacation vacancy of the Chief Clerk on the claim dates in question. The Organization asserts this action by Carrier was improper as the Claimant was not registered to fill the vacationing Chief Clerk's position. Therefore, argues the Organization, the Claimant in effect was removed from his regular position when Carrier required him to fill the Chief Clerk's vacancy. The Organization takes the position Carrier violated Rule 24 of the Controlling Agreement effective June 4, 1973 in two ways: (1) Carrier failed to fill the Chief Clerk's vacation vacancy with the appropriate senior employe as provided for in Section (a)(l) which reads as follows:

"First-by the senior regularly assigned employee who has filed written request with designated officer, with copy to Local Chairman, (not less than twenty-four (24) hours prior to the starting time of desired position(s) (vacancies), i..;"

and (2) Carrier failed to compensate the Claimant in accordance with Note(b) of the Rule which reads as follows:

"An Employee held off or removed from his regular position and required to fill a vacancy other than as outlined

"in the first sentence of paragraph (a) of this note is entitled to a minimum of eight (a) hours' pay at pro rata rate for each position."

The Carrier contends the Claimant was not removed from his position at all, asserting he merely performed the work normally performed by him on days when the Chief Clerk was present. The Carrier submits that the Chief Clerk's position for the forty (40) hour6 in questionwas blanked and argues that nothing in the 1973 Controlling Agreement requires it to fill such a vacation vacancy. In support of its position on this latter point, Carrier maintains that Rule 24 merely outlines the methods to be employed when vacancies are to be filled. Furthermore, Carrier cites Article 12(b) of the National Vacation Agreement of December 17, 1941, as supportive of its position thatabscncesvhichariseaccountan employe being on vacation are mot considered as constituting a vacancy. In addition, Carrier also cites Article 10(b) of the same Vacation Agreement, submitting that when a position is blanked, Article 10(b) permits the duties of that position to be distributed among two or more employes where said duties do not exceed 25% of the work load. The Carrier notes that under this 25% allowance, up to ten (10) hours of the total forty (40) hours of vork in question in the case at bar, could have been distributed among the Claimant as well as other employes. However, argues the Carrier, given the fact Claimant did mostly his ovn assigned work including a very time consuming daily statistical report, Claimant did not, in fact, perrorm anywhere near ten (10) hours of Chief Clerk's vork for the veek in question. Thus, concludes Carrier, the instant claim is without merit and should be denied.

In reviewing all the argument and evidence of record before us, the Board arrives at the following determinations:

1. We find Carrier's references to Articles 10(a), 16, and 5, of the December 17, 1941 National Vacation Agreement, advanced in support of its position in the instant case, to constitute nev argument which procedurally Is not allowable before this forum and therefore cannot be considered by us in reaching a resolution of the subject claim.

2. We view such other provisions of the 1941 National Vacation Agreement hereinbefore cited by the Carrier in support of its position in the instant case, specifically Articles 10(b) and 12(b), as setting forth, in guideline fashion, minimum standards regarding various aspects of vacations by which the parties thereto agreed to be bound. such provisions yielding minimum guarantees

do not, in the judgment of this Board, prevent the parties from agreeing to more stringent standards in their prospective negotiations, one on one, for a collective bargaining agreement.

3. Under the circumstances, we interpret Rule 24 of the parties' Collective Bargaining Agreement as effecting more stringent standards upon the parties at interest than those provided for under Articles 10(b) and 12(b) of the 1941 National Vacation Agreement. Thus, the parties' June 4, 1973 Collective Bargaining Agreement takes precedence in the case at bar and is found therefore to be controlling.

4. The language of Rule 24, Section (a) is clear and unambiguous with regard to the fact that the taking of a vacation does constitute a vacancy and, if such vacancy is to be filled, as we find that it was filled here, it is Carrier's responsibility to fill such vacancies of vacationing employes in the specifically prescribed manner set forth in Sections (a)(1) through (a)(3).

5. The Carrier therefore erred when it failed to fill the vacation vacancy of the Chief Clerk by placing the senior regularly assigned employe registered to fill said vacancy in accordance with Section (a)(1) of Rule 24, who, incidentally was not the Claimant.

Based on the foregoing determinations, we find the Claimant was removed from his regularly assigned position and required to fill the Chief Clerk's vacation vacancy which vacancy of course, did not arise as a result of any emergency conditions. Thus, Note (b) of Rule 24 is applicable here entitling the Claimant to eight (8) hours' pay at the pro rata rate for both his position and that of the Chief Clerk's position on the claim dates in question.

The Carrier is directed to pay the Claimant the pro rata rate of the Assistant Chief Clerk's position, which then amounted to $58.10, for each of the claim dates in question, May 17, 18, 19, 20 and 21, 1976. The total amount due the Claimant is therefore $290.50.

The Board notes that the applicable rate in this claim is the pro rata rate of the Claimant's own position and not that of the Chief Clerk's because the Claimant's personal rate as Assistant Chief Clerk is the same as that of the higher compensated Chief Clerk's position.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.