

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23510
Docket Number CL-22465

George S. Roukis, Referee

(Brotherhood of Railway, Airline and
(**Steamship** Clerks, Freight **Handlers**,
(Express and Station Employer,
PARTIES TO DISPUTE: (**Illinois Terminal** Railroad Company

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood (GL-8561) that:

1. Carrier violated the **Clerks' Rules** Agreement when it forced and/or required **8. R. Hagstrom** to **suspend** work on his regular **assignment** of **Operator-Clerk** No. 917 (**Relief**) on March 14, 15, 16, 17 and 18, 1977, **in** order to work **position** of **Operator-Clerk** No. 914 which **was** a vacancy due to the regularly **assigned** occupant **being on** vacation.

2. Carrier shall now be required to **compensate** **S. R. Hagstrom** for eight (8) **hours'** pay at overtime rate for the **above-named** dates due to having been forced **and/or** required to **suspend** work on his regular **assignment**.

OPINION OF BOARD: **Claimant contends** that Carrier violated the Clerks' Rules Agreement, specifically **Rules** 35 and 37(a) when it required him to **suspend** work from his regular **assignment** of Operator Clerk No. 917 on March 14, 15, 16, 17, and 18, 1977 in order to work the position of Operator-Clerk No. 914 which **was vacant** due to the regularly assigned incumbent being on vacation.

Carrier disputes **this** contention and **asserts** that it assigned Claimant to fill this position in accordance with Article 12(b) of the National Vacation Agreement and appropriately compensated **him** pursuant to Articles **10(a)** and **10(c)** of the aforesaid Agreement. Both parties adduced numerous precedent **Awards** to buttress **and substantiate** their positions.

In reviewing this **case**, there are a number of interpretative considerations that we **must** carefully **examine** before proceeding to a comparative analysis of the **key divisional Awards** submitted **vis this** claim. When the applicable 1942 Norse interpretations to the National Agreement are evaluated, we find that Article 12(b) requires Carriers not to bulletin vacation **positions** for the **purpose** of filling **same** from the **employees** submitting applications and that an **employee** holding a regular position who is utilized to fill the position of the vacationing **employee** is **governed by the provisions** of existing rules agreements or recognized practices thereunder.

This was the labor organizations' contention which was **upheld** by Referee Worse. Specifically he stated:

"On the **basis** of the theories of interpretation which the referee ha&applied to other articles of the agreement in the foregoing **portions** of the Award, it is clear that the Carriers' position on this question cannot be sustained. **However**, the referee believes that the parties should proceed without delay in accordance with Article 13 of the Agreement, to negotiate fair and reasonable **adjustments** of the blanking rules so far as their application to the vacation **agreement** is concerned.'!"

In **this** dispute we are not confronted with an **issue** respecting a blanking **situation** but with a claim asserting **that** specific rules were violated.

Carrier, **contrawise**, argues that the **Claimant** as the junior qualified **employee** was properly assigned to the Operator-Clerk No. 914 **position** as per the requirements of Article 12(b) since **it** did not **utilize** a regular vacation relief **employee** and it observed strictly the seniority **principle** consistent with its prerogative to arrange the work force in the most efficient **manner**. (See Third Division Award 10957 on this point). **Admittedly** **this** is a persuasive argument by itself, but cannot overlook the relevancy of **Rules** 35 and 37(a) to **this** dispute, when we consider what Referee Worse had to say regarding specific rules that affect the Vacation Agreement provisions and our case law on analogous adjudicative questions. **Referee Morse recognized** that **it** was possible for future referees to be confronted with a problem involving a conflict between the Vacation Agreement and specific work rules and stated in pertinent part:

"**This** referee held **many conversations** with **representatives** of the employees and of the Carriers, and as a result of those **conversations**, he **knows** it to be a fact that the parties reached the Washington settlement with the understanding that the vacation **plan** was to be subject to the **Rules** Agreement⁸ but that the parties **would negotiate** adjustments of any working rules in any existing agreements which in their application would produce **results** contrary to the purpose of the vacation plan."

We have no record that the parties negotiated any work rule adjustments to **comply** with this pragmatic admonition.

On the other **hand**, we have compiled a body of **decisional** law respecting Vacation **Agreement** disputes and we will **review** those **holdings germane** to the **present** issue.

In Third Division Award 20998, we sustained Carrier's position when it unilaterally removed a regular assigned employe from his **regular** position of **Manifest** Clerk to fill vacancies on the position of Assistant Chief Clerk. We noted the relationship of Article 6 of the National Vacation Agreement to Article **10(a)** governing rates of pay in such situations and concluded that Carrier's position was further **reenforced** by the "precise freedom of assignment" language contained in the special "Ratio of Rates" Agreement agreed to by the parties on April 9, 1973. But in that Award, we were not confronted with a claim involving similar rules to **those** in the case now before us.

In Third Division Award 21614 which Carrier also avers is on point with this **dispute**, we reached a similar conclusion to our holding in Award 20998 but again on a set of facts that did not include similar rules.

In **the** instant case, **Claimant** charged that Carrier violated Rules 35 and 37(a) of the Working Agreement which are referenced hereinafter.

RULE 35 - GUARANTEE

Regular assigned **employe** or **employees** being used to relieve **regular** assigned **employees** will receive one day's pay within each **twenty-four** (24) hours, according to position occupied or to which entitled, if ready for **service ad not used**, or if required on duty less than the required **minimum** number of hours as per position, except on rest days.

**RULE 37 - REGULAR ASSIGNED EMPLOYEES
DIVERTED TO WORK ON OTHER
THAN THEIR REGULAR POSITIONS**

(a) Regularly assigned employees will not be required to perform service on **other** than their regular positions except in emergencies. When they are required to perform service in an emergency on other than their regular positions, they will be paid at the time and one-half rate of the position they fill, but, not less than the daily compensation of their regular position.

When **these** rules are examined within the context of cur decisional law dealing with both similar rules and factual situations, we have no judicial option other than to sustain the claim.

In Third Division Award 21578, which is analogous to this case, we held that:

"...in the absence of any emergency as defined in the agreement, Carrier caused **Claimant** to be suspended from his regular position to perform relief, work, a violation of the agreement, and Would **not** thereafter permit him to work his **own** position because of the Federal **Hours of Service Act**."

In that case the issue dealt with a claim regarding the **filling** of a vacation vacancy by a regularly assigned **employee** in the absence of an emergency. Since there was no emergency present and the parties were governed by rules similar, to **Rules** 35 and 37(a) herein, we **found** for petitioner. (See also Third Division Award 16492).

In **summarizing** our conclusion, we find our decision in Award 21578 dispositive of this dispute and not inconsistent with our holdings in the **prior** Third Division **Awards** reviewed such as 20998 and 21614.

In these other cases, we were not faced with claims involving provisions similar to Rules 35 and 37(a) and accordingly, we construed the pertinent articles of the Rational Vacation Agreement in a manner that best comported **with the** intended meaning of Referee Morse's interpretations and **our decisional law**. In Third Division Award 4626, we held in part that:

"It was the **clear** intention of the parties to the Vacation Agreement that the existing **rules** as to working **conditions** were to continue unless changed by negotiations."

Rules 35 and 37(a) are explicit and unambiguous provisions **and** were previously interpreted by this Board to support **Claimant's** position. The parties have not defined vacation vacancies to be emergencies or outside the purview of these Rules and, upon the record then, **we must** conclude that the **Agreement was** violated. **Inasmuch** as **Claimant** did not receive the day's pay provided for his regular hours at his regularly assigned location and since he was improperly **suspended** from working these hours at his regular position, he is entitled to be paid for them at the pro rata rate.

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** at the pro rata rate.

NATIONAL **RAILROAD ADJUSTMENT BOARD**
By Order of Third **Division**

ATTEST.



Executive Secretary

Dated at Chicago, Illinois, this **29th** day of January **1982**.