

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24073
Docket Number CL-24313

Tedford E. Schoonover, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station ~~Employees~~
PARTIES TO DISPUTE: (
(Elgin Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9549) that:

1. Carrier violated the effective Clerks' Agreement when it failed to follow established ~~agreed~~ to procedures in filling a vacation relief assignment on July 22, 23, ~~24, and 25, 1980;~~

2. Carrier further violated the effective Clerks' Agreement when it failed to ~~follow~~ established ~~agreed~~ to procedures in the selection of ~~employees~~ to perform extra work on July 28, 29, August 4 and 5, 1980;

3. Carrier shall now compensate ~~Computer~~ Operator E. Minarich for eight (8) ~~hours' pay~~ at the time and one-half rate of Position AC-946 for each of dates July 22, 23, 24, and 25, 1980, and shall ~~compensate Computer Operator~~ Phil Rodriguez for eight (8) hours' pay at the ~~time and one-half~~ rate of Position AC-947 for each of dates July 28, 29, August 4 and 5, 1980.

OPINION OF BOARD: Carrier operates a computer center at Joliet, Illinois. This office is operated as a sub department under the Accounting Department and is located within Seniority District No. 2. At the ~~time~~ of the dispute the computer center ~~was~~ operated ~~two~~ turns per day.

The circumstances ~~out~~ of which the two claims arose are different even though the Carrier chose to combine them in its declination of April 8, 1981.

The issues in the Minarich claim arose out of using a keypunch operator to assist a computer operator in a vacation relief situation. In the Rodriguez claim, a keypunch operator was used to assist ~~a computer~~ operator due ~~to~~ an extra load of work.

In support of the claims the Union ~~cites~~ Article 10 of the National Vacation Agreement of ~~December 17, 1941,~~ and also Rule ~~42 of~~ the basic agreement with the Carrier as follows:

"Article 10 of the National Vacation Agreement of
December 17, 1941:

(b) ~~Where~~ work of vacationing employees is distributed ~~among two or more employees,~~ such employees will be ~~paid~~ their own respective rates. However, not more ~~than~~ the equivalent of ~~twenty-five~~ per cent

"of the work load of a given vacation employee can be distributed ~~among~~ fellow ~~employees with-~~ out the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

"Rule 42 - Overtime, reads in part:

(f) In working overtime before or after assigned hours, employes **regularly** assigned to class of work for which overtime is necessary shall be given preference; the same principle **shall** apply to working rest days and holidays. It is recognized that when overtime work is necessary on a position the incumbent has the right and responsibility to perform such overtime **work**. If for good and sufficient reasons, however, the incumbent is not able to perform such overtime work it **will** be offered on a seniority basis to the available qualified employe in that location and department. If such overtime work is declined by **all other** employes to whom it is offered the junior available qualified employe will be required to perform the work. The Carrier will give notice as far in advance as possible to employes required to perform overtime work.

(g) An employe denied **overtime** work which he is rightfully entitled to will be compensated at the **time** end ore-half rate, the same as if he had performed the **work**."

The Union contends that "**The** National Vacation Agreement sought to prevent any overburdening of remaining employes and, accordingly, it provided that no one employe should absorb another's work while on vacation. it 2s clearly and unequivocally stated that this **distribution** will be '**...among** two or more...' employes."

The Board does not agree that the National Agreement requires the distribution to be among two or more employes. It only sets up **this** condition to show how employes will be **paid** in the event the work ~~is~~ distributed **among two** or more employes. The **National Agreement** does require that not more than **25%** of the cork load can be distributed without hiring a relief worker. In the **Minarich** claim, this condition **was** complied with in that only **24%** of the work load of the vacationing employe was performed by Key **Punch Operator Kennedy**.

Rule 42 of the basic **agreement** cited by the Union in support of the **Minarich** claim does not appear to have applicability. It sets forth **requirements** for **working** overtime. **This** condition does **not** exist in this situation. Rule 45 of ~~the~~ same agreement covering **the** subject of absorbing **overtime** provides:

"It is the intention, however, that an employe **may** be used to assist another employe **during** his **tour** of duty in the same office or location where he works and **in** the same seniority without penalty. An **employe** assisting another employe on a position **pay-**ing a higher rate will receive the higher rate for the time worked while assisting such employe, except that existing rules which provide for payment for the highest rata for entire tour of duty will continue in effect.. ."

The above quoted provisions clearly recognize Carrier's right to use workers in the same office **and** seniority district to assist other **employees** as was done in the **Minarich** case.

In the Rodriguez claim the question of vacation relief is not involved. Here, the situation is that Key **Punch** Operator Kennedy, of the same office and seniority district was used on given dates to assist in performing the same kind of work, as in the **Minarich** claim. The reason was to provide assistance with an extra work load.

In this case the Union cites alleged violations of Rule 42, as in the previous case. Here again, the **Board** holds that overtime is not an issue and thus Rule **42** does not appear to have been violated. On the other hand, Rule 45, quoted above clearly provides for the use of one employe in the office and seniority district to assist another without penalty.

In both of the cases, the Union alleges **violations** of local agreements covering calling procedures. Those agreements have been examined in the resolution of this case and clearly cover arrangements and the order of calling computer operators for overtime. Nowhere in the provisions of the local agreements is there any indication that they supersede Rule **45** quoted above.

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

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That the Agreement was not violated,

A W A R D

Claim denied. .

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.

