NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24527

THIRD DIVISION

Docket Number CL-24283

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9499) that:

(a) The Carrier violated the terms of the General Agreemeent and Memoranda thereto when on November 19, 1978, it failed and refused to utilize the service of Clerk Joan G. Gibson; and,

(b) The Carrier shall now arrange to allow Clerk Gibson eight 181 hours at the punitive rate of pay for November 19, 1978.

OPINION OF BOARD:

The facts in this case are as follows:

On November 9, 1978, a vacancy existed on the position of Chief Clerk to Terminal Trainmaster, C-14, which was relieved by Swing Clerk C-354. The incumbent of the latter position was absent because of personal illness. In order to fill these positions, Carrier rearranged Clerk C. E. Johnson from position C-35 to position C-14, and Clerk P.F. Collins from position C-165 to position C-35. Other employees were rearranged as a result of the job changes impact. The changes were implemented in accordance with the procedures for Agreement Rule 12(a), but Carrier later acknowledged that Clerks Johnson and Collins did not have letters on file requesting rearrangement as required under Rule 12(a) 3, and said employees were provided penalty compensation pursuant to Rule 24 paragraph (C).

In defense of its position, the Organization argues that Rule 12(a) specifies five sequences which are applicable to the filling of temporary positions. It contends that since none of the sequences were applicable that day when the positions were rearranged, Carrier was obligated to observe Section (8) of Article 12, which requires that vacancies will be filled by regularly assigned employees on au overtime and/or call basis. The Organization avers that violating one provision of Rule 12, which in this instance was Section (a) 3, and paying the correlative penalty payment, does not excuse Carrier from simultaneously violating another provision, which in this case was Section (8).

Carrier does not dispute that Clerks Johnson and Collins were improperly rearranged, but argues that it paid the penalties required by Rule 24 for rearranging employees who did not have letters on file. It contends that Rule 24 cannot be enlarged to provide overtime payments to other employees who may or may not have been used on an overtime basis, if Carrier had not rearranged employees

with no letters on file and asserts that the Rule 24 contemplates, by definition, that improper rearrangements may occur.

In our review of this case, we agree with Carrier that Rule 12(g) was not violated. Carrier was not barred from rearranging the office force on November 19, 1978, but it had to comply with the provisions of Article 12. In this instance Carrier rearranged the office force in accordance with section (a) 3, but it was an improper action. The rearranged clerks did not file written letters with the supervising officer requesting use on such vacancies and were appropriately compensated under Rule 24 (c) when penalty claims were filed on their behalf.

By itself Rule 12(g) would appear to support Claimant's position where short term vacancies or new positions cannot be filled under the provisions of Rule 12(a). But the parties purposely provided a monetary penalty when an employee who has not filed a letter of rearrangement, has been rearranged to a position the starting time of which is the same as his position. In effect, the parties had provided for this contigency, but did not attach an additional liability for any other presumptive rule violation. Carrier had chosen to fill the vacancy on the Swing Clerks position by rearrranging the first trick clerical employees and it paid the required penalty amount for rearranging Clerks Johnson and Collins improperly. Under the Agreement it was not obligated to tender any additional penalty payments. If Carrier had decided to fill the vacancy from the overtime list under Rule 12(g), it would be required to select the most senior employee. This was not the case herein. It decided to fill the vacancy by rearranging the office force and it paid the Agreement-provided-for penalty when it improperly rearranged Clerks Johnson and Collins. In fact, several positions were rearranged on November 19, 1978, including the filling of Position C-271 from the extra list. The other positions were rearranged properly in accordance with Section (al of Rule 12. If we were to direct that Carrier pay an additional penalty amount to Claimant, we would be rewriting the Agreement. This is not our judicial function. The parties had contemplated the type of breach addressed by Rule 24(c) and suffice it to say, Carrier paid the prescribed penalty for its Agreement violation. The Agreement, under these circumstances, does not provide for an additional Rule 12 (g) payment.

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever-Executive Secretary

Dated at Chicago, Illinois, this 29th day of September. 1983.