

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24527  
Docket Number CL-24283

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks  
( Freight Handlers, Express and Station **Employees**

**PARTIES TO DISPUTE:** (

(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 **Agreement** 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 an 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 **contingency**, 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 **rearranging** 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 (a) 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;

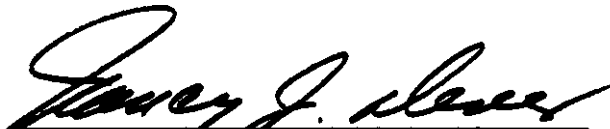
That the Agreement was not violated.

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.