NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24644

THIRD DIVISION

Docket Number CL-23801

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9349) that:

1. Carrier violated Rules 4, 9 and 24 of the Agreement when it removed Clerk L. L. Hamlin from his regular assignment and required him to work a temporary vacancy on the position of Keypunch Operator, December 23, 1978.

2. Carrier shall now be required to compensate Clerk L. L. Hamlin for eight (8) hours pay at the straight time rate of his regular assignment (Utility Clerk) account Carrier not permitting him to work his regular assignment on December 23. 1978.

OPINION OF BOARD: Claimant was regularly assigned to Rest Day Relief Job R-530, at the Setteqast Yard Office, which, on December 23, 1978 was to relieve Utility Clerk 579. When he reported to work at his regular location, Carrier moved Claimant to work the position of Keypunch Operator No. 578, and Claimant's position of Utility Clerk was blanked.

Carrier contended that due to excessive absenteeism all regular and extra Clerks were not available to fill the Keypunch Operator Job 578. Carrier also maintained that it exhausted all efforts to fill the assignment by cailinq the overtime board and that the third shift employes refused to double-up. Finally, Carrier argues that in order to continue its operations in this emergency situation, it required Claimant to move up to the Keypunch Operator position, which without it would have had to suspend the first shift operations.

Tbe Organization's position is that Carrier ignored the requirements of Rule 24(a)(3) and 24(j). Rule 24(a)(3) requires that any employe who wished to be rearranged in force because of any temporary vacancy will make a request in writing. Rule 24(j) states that:

> "In the rearrangement of the regular force under the provisions of paragraph (a), it is understood that such employees cannot be required to work temporary vacancies if they do not desire to do so."

Moreover, the Organization argues that there are no exceptions set forth in Rule 24(j), and that, in any event, Carrier failed to prove that any "emergency" existed requiring Claimant's reassignment on December 23, 1978.

Carrier maintains that Claimant was used in a rearrangement of forces to work the higher-rated position on the date in question as provided in Rule 24(a) and (b). Moreover, Carrier also argues that under Rule 35 (Absorbing Overtime) and the Note, this Board has made it clear that the use of an employe during his regular tour of duty in the position of another employe is no longer prevented by interpretations given prior to 1971 in the basic rule.

While the Board acknowledges that Rule 24(a) and (b) provide for rearrangement of forces, and that Rule 35 and the Note do not prevent the use of an employe during his regular tour of duty in the position of another employe, we cannot disregard the specific restriction found in Rule 24(j) that in rearranging the regular force. no such employe can be required to work temporary vacancies if they do not desire to do so. As stated in Elkouri and Elkouri, How Arbitration Works, 3rd Ed., BNA, 1973, pp. 307-309, in interpreting a written instrument, the Arbitrator must construe the agreement as a whole to determine the true intent of the parties and to determine the meaning of a part "with regard to the connection in which it is used, the subject matter and its relations to all other parties or provisions."

While this Board can appreciate Carrier's argument that a literal application of Rule 24(j) in light of Rule 24(a) and (b) and Rule 35 and the Note might prevent Carrier from operating in an emergency situation, this Board is aware, from a reading of both prior Awards and Agreements, that when the parties want to provide for exceptions, such as emergencies, to certain provisions in their Agreements, they do so. Until such time as Rule 24(j), which has been in effect for many years, is either changed or amended through correspondence, conference and/or negotiations, it is not for the Board to modify or change the otherwise specific and mandatory language of Rule 24(j).

Moreover, in considering the "emergency" nature of the situation presented on December 23, 1978, as a possible narrow and limited exception to Rule 24(j), the Board notes that, despite Carrier's reported efforts to the contrary, a number of prior Awards have reached the conclusion expressed in Award 20150, that: "The nonavailability of personnel for various reasons -- is a constant, never ending situation, which must always be accepted by the Carrier."

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 Employe 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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984