

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24709
Docket Number CL-24618

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Empress and Station Employees
(
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9589)
that:

(1) Carrier violated Rule 12 on November 19, 1977 when they arbitrarily rearranged Clerk Charles Lodico from Position T-43 to Position C-156 and did then fail to properly compensate him as provided in Rule 24.

(2) Carrier shall now be required to allow Clerk Lodico eight (8) hours pay at the pro rata rate for November 19, 1977, in addition to other earnings for this date, as a result of this violation.

OPINION OF BOARD: At the time this dispute arose, Claimant, C. Lodico, was regularly assigned to the position of Relief Operator, work week Saturday through Wednesday, rest days of Thursday and Friday. On Saturday, November 19, 1977, Claimant was assigned to relieve position of Operator, T-43, with hours 12 Midnight to 8 a.m. At that same time, a vacancy occurred in a Station Clerk position, C-156, account of vacation of the incumbent. Carrier attempted to fill that vacancy with qualified employees, but to no avail; Accordingly, at 3 a.m. on that day, Carrier reassigned Claimant to Position C-156. Additionally, Carrier called in Clerk J. Dale to fill in the remaining hours on Claimant's T-43 position.

As a result of Carrier's actions, the Organization filed this claim. In it the Organization contends that Carrier violated Rules 12 and 24 of the Agreement by failing to compensate Claimant an additional eight hours pay at the pro rata rate for being reassigned on November 19, 1977. Those rules read, in relevant part:

"RULE - 12 - TEMPORARY VACANCIES

(a) All vacancies and new positions of less than thirty (30) calendar days duration, including bulletined positions pending assignment, will be filled in the following sequence, except as provided in Notes 3 and 4 at the end of this Section (a):

1. The Railway may rearrange the office force where practicable to perform the work of employees off sick under Rule 60 or Memorandum Agreement No. 4 Supplementary to the General Agreement, such rearrangement to be within the assigned hours of the employees used to **perform** the work. Rates to be applied in accordance with the provisions of Rule 45.

2. The Railway may rearrange the office force where practicable to perform the work of employees off on vacation in order to place

the relief employees on a less responsible position, such rearrangement to be within the assigned hours of the employees rearranged. However, first preference in filling vacancies will be in seniority order of those having filed letters of rearrangement.

3. (Except as may be provided in Rule 3, Section (e)): In all other cases of filling vacancies or new positions under this Section (a), the rearrangement of forces will not apply unless an employee has filed in writing with the supervising officer in charge of the office in which the vacancy occurs, with copy to the Local **Chairman**, a request that he be used on such vacancies or new positions.

....."

"RULE - 24 - TRADING POSITIONS, REARRANGED, HELD ON FORMER POSITION, OR RUN-AROUND

(a) Employees shall not be permitted to trade positions except by agreement between the Management and General Chairman.

.....

(c).....

An employee rearranged to a position the starting time of which is the same as his own starting time, who has not filed letter of rearrangement for the position to which rearranged, will be paid a minimum day at the pro rata rate of his regular position, in addition to the amount to which entitled for working position to which rearranged. This paragraph shall not apply to rearrangements made under Rule 12, Section (a), Subsection 1, where employees are rearranged to perform the work of an employee absent under Rule 60 or Memorandum Agreement No. 4, Supplementary to the General Agreement; nor shall it apply to rearrangements made under Rule 12, Section (a), Subsection 2, provided letters on file for rearrangement have been honored in filling vacancies involved in Subsection 2."

The Organization asserts that Rule 12(a), Subsection 2 requires that a relief employee must be available before rearrangements can be effectuated. Here, the Organization notes that Clerk Dale was not available as a relief employee because of the provisions of the Hours of Service Act. Thus, the Organization reasons that Carrier could not rearrange Claimant's hours under Rule 12(a), Subsection 2. Accordingly, the Organization concludes that Carrier arbitrarily rearranged Claimant's hours in the middle of his shift in violation of the Agreement.

Moreover, the Organization maintains that Carrier's actions violated Rule 24(c). That rule mandates that employees who are rearranged will be paid a minimum day at the pro rata rate for their regular position if they meet two conditions. First, the starting time of the new position must be the same as the starting time of the position from which the employee was rearranged. Second,

the employee must not have filed a letter of rearrangement with the appropriate authorities. The Organization points out that Claimant met these two conditions here. As such, the Organization concludes that Claimant is entitled to pro rata pay for Position C-156 in addition to compensation for Position T-43.

Carrier insists that it did not violate the Agreement here. It notes that compensation under Rule 24(c) is not required if the rearrangement was made under Rule 12(a), Subsection 2. Carrier asserts that it followed all of the procedures of that Rule in seeking a relief employee for Position C-156. Upon failure to secure such a qualified replacement, it rearranged Claimant in that position. Thus, Carrier argues that it fully complied with the provisions of Rule 12. Accordingly, it asks that the claim be denied.

The relationship of Rule 24(c) to Rule 12(a), Subsection 2 is clear. The compensation provisions of Rule 24(c) do not apply "to rearrangements made under Rule 12(a), Subsection 2..." **Thus**, the sole issue to be decided is whether the rearrangement made here was accomplished pursuant to that rule. We believe that it was.

Rule 12(a), Subsection 2 grants Carrier the right to rearrange the office force to perform the work of **employees** off on vacation. Such rearrangement is restricted to the assigned hours of the employee being rearranged. Here, Position C-156 became vacant account of the vacation of the incumbent. Its hours were identical to those of Claimant's existing position, T-43. Thus, Carrier clearly acted pursuant to Rule 12(a), Subsection 2, by assigning Claimant to work Position C-156 from 3 a.m. to 8 a.m. on November 19, 1977.

In addition, we believe that the Organization's reliance on the status of Clerk Dale is misplaced. Clerk Dale may not have been a relief employee that date account of the Hours of Service Act. However, this claim does not involve Clerk Dale's availability or lack thereof. It involves the propriety of rearranging a Claimant from Position T-43 to C-156. As noted above, such rearrangement was in accordance with Rule 12(a), Subsection 2. Accordingly, Claimant is not entitled to any additional compensation under Rule 24(c), since the provisions of Rule 12(a), Subsection 2 were complied with. Therefore, the claim must be denied in its entirety.

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 Rmloyes involved in this dispute are respectively Carrier and Rmloyes 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.