

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24806  
Docket Number CL-24580

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9570)  
that:

(a) Carrier violated Rule 42 and others of the Clerks' General Agreement when on August 29, 1979 it failed to fill or compensate anyone on or for Position T-4, Agent-Operator at Muncie, Indiana.

(b) Clerk John B. Carpenter now be allowed eight (8) hours pay at the pro rata rate of \$70.47 per day in addition to other earnings for this date as a result of this violation.

OPINION OF BOARD: Clerk D. A. Doty is the regular assigned employee of the Agent-Operator T-4 position at Muncie, Indiana. His workweek extends from Monday through Friday, 8:00 A.M. - 5:00 P.M. with rest days of Saturday and Sunday. Clerk Doty is also an Extra Train Dispatcher and had worked as Train Dispatcher on August 28, 1979 in accordance with Rule 22½ of the Clerk's Agreement which specifies in part that clerical employees holding seniority as Train Dispatchers will be required to protect such seniority and accept such work as provided in the applicable Train Dispatchers' Agreement. Carrier had assigned an extra clerk to protect his position on August 28, 1979, but this employee who had marked off sick at the end of the August 28 tour of duty could not protect the Agent-Operator T-4 position on August 29, 1979. Clerk Doty could not return to his regular assignment on August 29 because of the Hours of Service Law and Carrier blanked his position. Claimant worked his assigned hours on August 29 which coincided with the regular hours of Clerk Doty's position, but he contested Carrier's action by filing a claim on August 29, 1979. He asserted that Rule 42 of the Clerk's Agreement was violated when Carrier blanked the T-4 position. In particular, he contended that Rule 42 guaranteed the employee or the position five days per week. Rule 42 - Weekly Guarantee - reads as follows:

"(a) Except as provided in Section (b) of this rule, nothing herein shall be construed to permit the reduction of days for regularly assigned employees and/or positions covered by this Agreement below five (5) per week.

(b) The number of days may be reduced in a week in which one of the nine holidays specified in Rule 39, Section (b), occurs within the five (5) days constituting the work week to the extent of such holiday."

In defense of its action, Carrier asserts that when the available qualified extra clerk, who was called to fill the T-4 vacancy marked off sick on August 29, 1979, it had no available employee to protect the position. It avers that Clerk

Doty was paid for August 29 pursuant to Rule 4(e) of the Train Dispatchers' Agreement and Claimant was under pay working his own regular Chief Clerk's position, whose hours of employment coincided with the position blanked. It argues that it properly compensated Clerk Doty at the pro rata rate of his regularly assigned position and notes that Claimant had never filed a letter requesting that he be rearranged to the T-4 position.

In reviewing this case, the Board finds that the Agreement was technically violated. Rule 42, which is a clear and unambiguous provision explicitly precludes the reduction of days for regularly assigned employees and/or positions covered by the Clerk's Agreement below five (5) days. It is a guaranteed workweek rule. The only exception permitted is when one of the nine holidays specified in Rule 39 Section (b) occur within the five days constituting the workweek to the extent of such holiday. This exception is not present here. Carrier recognized the necessity of covering the T-4 position when it assigned an extra clerk to protect it on August 29, before the extra clerk marked off sick. Thus, we must conclude that it was mindful that the position should have been protected. Whether Clerk Doty was precluded from returning to his regular position and was paid under the Train Dispatchers' Agreement is of no consequence here since Rule 42 plainly provides a weekly guarantee to the position covered by the Clerk's Agreement. The negotiators of that provision purposely distinguished between employees and positions and we must give effect to that distinction. The Agent-Operator T-4 position cannot be reduced below five (5) days. This is the pivotal focus of Rule 42 and it reflects the intent of the contracting parties.

Correlatively, we cannot agree that the monetary portion of the claim is justified under these circumstances since neither Claimant nor any other identifiable employee suffered loss from the violation. Claimant was under pay, working his regular position at the time, and there was no other available employee to fill the position. The only available employee who was assigned the position on August 29, 1979 had unexpectedly marked off sick, and Claimant had not filed a letter requesting that he be rearranged to the T-4 position.

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

That the Agreement was violated.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984.