

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25403
Docket Number CL-25643

Eugene T. Herbert, Referee

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

PARTIES TO DISPUTE: (

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9891**) that:

1. Carrier violated the clerks' Rules Agreement when, it allowed Mr. R. T. Williams to return to regular assignment of Job No. 99 on March 12, 1983, without assuming rest days of position No. 11 on which he had performed service five days March 7, 8, 9, 10, 11, 1983.

2. Carriers action was arbitrary and violative of the Agreement due to the facts involved.

3. Carrier shall **now** be required to compensate Mr. R. T. Williams an additional four (**4**) hours pay representing the difference between straight time allowed and punitive rate due for March 12 and 13, 1983, and in addition, be required to compensate clerk D. Watson eight (**8**) hours for March 12, 1983 and clerk J. Minton for eight (**8**) hours for March 13, 1983, both at the pro rata rate of pay on position of Job No. 99 which they would have worked if not for Carriers Agreement violative action.

OPINION OF BOARD: Claimant Williams performed service from March 7 through 11 (inclusive), 1983, based on his selection to fill a vacation vacancy in an excepted (**B(2)**) position as Secretary to the Superintendent of **Carrier**. He was allowed to return to his regular assignment on March 12 and March 13 without assuming any days of rest.

Rule 39 of the Agreement between the Parties **states** that:

"RULE 39
OVERTIME

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"(**c**) Employees worked more than **five (5)** days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another **or** to or from an extra or furloughed list, or where days off are being accumulated under paragraph (**g**) of Rule 34 (**Work Week Rule**).

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Claimant here lost days of rest because he was moving from one assignment to another. It is well established that specified rest days are related to the work assignment undertaken and not to the individual **employee's** actual work schedule.

Organization argues, however, that the provisions of its Memorandum of Agreement with Carrier dated October 15, 1981, govern in this situation. Article 4(d) of that Memorandum is as follows:

"4. The following procedures will govern the rearrangement of forces to fill vacancies known to be of five (5) days or more duration. (Vacancies referred to are vacation vacancies, positions under bulletin and assignment and suspensions of five (5) days or more) or, after having been filled for four (4) consecutive working days in accordance with Sections 1, 2 and 3 above. will be filled by rearrangement of forces as follows:

"(d) When the assignment ends on the last day of its workweek, the employee must take the rest days of the position before being permitted to rearrange to another position or to return to his regular assignment."

Carrier responds by noting an Agreed-to Question and Answer No. 6, relative to the aforementioned Memorandum.

"6. Q. do rearrangements apply to excepted positions?

A. No. -- Carrier has right to select."

The burden of proof that Carrier has violated a Rule **rests** with Organization. The Board must accordingly conclude that Carrier's position that excepted positions are not governed by Article 4(d) of the aforesaid Memorandum is correct. Organization has failed to satisfactorily refute that assertion.

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

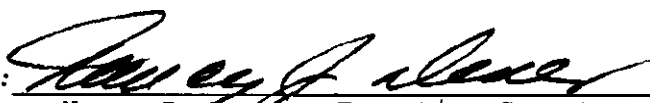
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1985.