

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25502
Docket Number CL-25346

Herbert L. Marx, Jr., Referee

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

PARTIES TO DISPUTE: {

(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9810**) that:

1. Carrier violated Rule 21 - Extra Boards and paragraph **2(c)** of Memorandum of Agreement covering establishment, maintenance and operation of Extra Boards when, on April 23 and 24, 1980, Position Machine Operator-Yard Clerk at Whitehall. N.Y. , 2300 hours was vacant. No Extra Clerk "as available. Trainmaster Welch marked furloughed employee **Charpentier** on Extra Board to cover the vacancy.

2. Claimant **Carswell** "as qualified, available but not called for these vacancies. Therefore, Claimant **Carswell** should **be** compensated at the time and one-half rate eight hours each day April 23 and **24, 1980. (44-80, 45-80)**

OPINION OF BOARD: A vacancy existed in a Relief Clerk Position on April 23-24, 1980. The Carrier states that the Extra Board had been reduced to one employee prior to this event, by mutual consent with the Organization. The one Extra Board member was unavailable to fill the vacancy. The Carrier then called in a furloughed employee to cover the vacancy.

The Organization argues that the vacancy should have been filled on an overtime basis by the Claimant, who "as available for the assignment.

The Carrier's first written denial of the claim "as **"account no basis"**. The second level denial merely stated: *We do not agree with any of the instances that the Clerks Rules were violated.. The denial at the level of **Superintendent-Labor Relations** read as follows:

"Decision: As Superintendent-Administration advised in his August 4, 1980 denial to you:

'*** This "as merely an increase of an extra board when there "as obviously a need to do so. Extra boards are reduced and increased all over this railroad as the needs decrease and increase. ***'

There "as no rule violation as alleged.

Claim is without merit and rule support and is **denied."**

As pointed out by the Organization, the Memorandum of Agreement in connection with Rule 21, EXTRA BOARDS, reads in pertinent part:

• 2. (c) Any increase or decrease in the **number** of of Extra Board employees at a given point shall **be** subject to mutual agreement of the parties hereto, and shall be established **as** provided in paragraphs **2(a)** and (b). In case of reduction, employees affected will be permitted to exercise their seniority rights as provided in Rule 16 of the Clerks' Agreement:

This directly contradicts the reasoning in the Superintendent-Labor Relations reply.

In its Submission to the Board, the Carrier bases its defense on the right to create an "emergency **board**" to cover vacancies. There is no record that this argument was raised on the property or that this was contemplated in calling in the furloughed employee. Thus, this is improperly set forth for the first time before the Board. Further, it appears to contradict directly the Carrier's reason offered at the highest level on the property.

The record thus shows no convincing answer to the Organization's contention that a furloughed employee, not part of a then recognized Extra Board, was improperly called to work in place of an available employee.

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.

A W A R D

Claim sustained

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

RECEIVED

Dated at Chicago, Illinois, this 13th day of June 1985.