

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25596

Docket Number CL-25707

James Robert Cox, Referee

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

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad
company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9857) that:

1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it permitted a furloughed unassigned employe to request a vacation vacancy in lieu of using a regular employe to avoid the payment of overtime.

2) Carrier shall **now** be required to compensate **Employee** Ronald E. Moellenbrink eight (8) hours pay at the time and one-half rate of Train Clerk Position 04370 for dates of July 27, 28, 31 and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, and 15, 1982.

OPINION OF BOARD: Employee **Dron** was displaced from her regular assignment July 6, 1982, and moved to a temporary vacancy on R-14 July 8th. Prior to the completion of that assignment, she requested and received Carrier permission to **move** to a third trick vacation vacancy commencing July 27, 1982. Organization contends that Claimant, with more seniority than **Dron** and regularly-assigned occupant of a Train Clerk position, should have been assigned to **work** the third trick position on an overtime basis and that Carrier violated the Rules **Agreement** at Bensenville when it assigned **Dron**, whom he contends was a furloughed, unassigned employe, to the vacation vacancy. Claimant seeks 8 hours pay at time-and-one-half as compensation for overtime lost as a consequence of the failure to assign him the **15-day** vacation fill-in assignment. He continued to work second trick.

Rule 9 and Note 1 thereof state that temporary vacation vacancies, if filled, will **be** assigned to the **"...regularly assigned employe in the seniority district making request thereunder...on the basis of seniority, fitness and ability..."** The request, according to this Note, is to be made in writing with the Officer having supervision over the position involved and, **most significantly**, must be made "...at least twenty-four (24) hours in advance of the time he expects to commence filling the temporary or vacation vacancy."

The Note, referring to Rule 9(h), states that when a regularly-
assigned employe is assigned in accordance with its provisions, the employe
(unless disqualified) "...must remain on that position for the duration of
the vacation or until the position is bulletined and assigned either as a
temporary or permanent vacancy...."

The Organization contends that, since Dron had exercised her
seniority July 8th to a temporary vacancy, she was not a regularly-assigned
employe and therefore under the aforementioned Rule 9, Note 1, could not
properly request the temporary vacancy on third trick. Although Dron was
not, at the time she moved to the third trick position, a regularly-assigned
person in R-14, the evidence shows that Claimant did not make the required
request to fill that vacancy. Neither Claimant nor Dron met the assignment
requirement.

Such a request is a contractually agreed upon precondition for
entitlement to the assignment and, irrespective of Carrier's improper
assignment of Dron, without having made the request, Claimant is not entitled
to a make whole remedy.

While the Board finds a violation of Rule 9(g), the claim for
compensation by Claimant is denied.

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 Employes 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.

