

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26085  
Docket Number CL-25919

Lamont E. Stallworth, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9913) that:

(a) Carrier violated the Clerks' Agreement, particularly Rule 12, beginning October 29, 1980 when they required the incumbents of extra board positions at Cleveland, Ohio to report to their headquarters point every morning then sending them home when no assignments are made.

(b) Carrier now be required to comply with the intent and provisions of Rule 12 and only require those extra board clerks who have been called to fill vacancies, and/or train, report to the headquarters point."

OPINION OF BOARD: The Organization contends that the Carrier violated Rule 12, Zoned Extra Board, when it required unassigned Extra Board employees to physically report to headquarters each day and then, sent them home after a few hours of waiting if they were not given jobs to work or for training.

The Organization also contends that the actions of the Carrier are contrary to the intent and language of the Agreement.

The Organization further contends that the disputed practice is only employed by the Carrier at its Cleveland location which constitutes arbitrary harassment.

The Carrier responded to the latter claim for the first time in its Rebuttal.

The Carrier asserts there is no provision in Rule 12 covering the disputed practice.

Rule 12 states:

"1. Not later than January 1, 1981, the Carrier will establish one (1) or more zoned extra boards in each seniority district for the purpose of providing adequate relief to fill temporary vacancies, and positions assigned thereto will hereinafter be referred to as extra board positions. Pending the manning of the zoned extra boards, Rule 12 of the Agreement effective March 1, 1972 shall remain in effect."

"2. Each zoned extra board will be manned by a minimum of seven and one-half percent (7 1/2) and a maximum of fifteen percent (15%) of the total number of regularly assigned positions within the zone. Positions on the extra board will be considered the same as regularly assigned positions and shall be bulletined in accordance with Rule 11; except, however, the bulletins for such positions will not designate the regular assigned hours, rest days, or duties to be performed. The daily rate of pay for such positions will be the rate of \$65.00, which shall be subject to subsequent general wage increases, including cost-of-living adjustments effective on and after July 1, 1980."

"5. (a) Except as otherwise provided herein, an employee assigned to an extra board position will be guaranteed payment of forty (40) straight-time hours per week at a rate of pay of not less than \$65.00 per day, subject to general wage increase, including cost-of-living adjustments effective on and after July 1, 1980, it being understood that the 'workweek' of such employee shall consist of five (5) days of eight (8) consecutive hours or less, exclusive of assigned meal period, within a period of seven (7) days starting with Monday."

"5. (c) (1) and (2) Subsection (c) (1) and (2):

(1) Employee assigned to extra board positions who miss a call when properly called under the provisions of this Agreement will not be considered available for a period of twenty-four (24) hours from the beginning of the tour of duty for which called and the guarantee contained in Section 5(a) shall be reduced by eight (8) hours for each calendar day during the twenty-four (24) hour period that the employee is not available for all tours of duty during that calendar day because of such restriction."

"(2) Employees assigned to extra board positions who mark off with proper permission, or otherwise relieve themselves from their assignments, will not be considered available for a period of twenty-four (24) hours from such time, and the guarantee contained in Section 5(a) shall be reduced by eight (8) hours for each calendar day during the twenty-four (24) hour period that the employee is not available for all tours of duty during that calendar day because of such restriction."

"5. (d) An employee shall not be considered as missing a call when he is not available to respond to calls for service made outside the three (3) hour periods of time immediately prior to 1:00 a.m., 9:00 a.m., or 5:00 p.m., however, it is understood that employees shall be considered as missing a call when they are solicited for service outside the periods of time specified herein, and are contacted, but fail to respond for such call."

"6(a) All short and temporary vacancies of less than thirty (30) calendar days' duration, including bulletined positions pending assignment, vacancies occasioned by vacations, sick leave, serving on juries, and personal leave, will be filled by the assignment of extra board employees. Extra board employees will only be used for the purpose set forth in the Section but will not be utilized to augment the regular work force."

"NOTE: Where a provision of this Agreement or a provision of a national agreement permits the blanking of a position, this Section 6(a) will not be construed as requiring the Carrier to fill the position. However, if the Carrier elects to fill such short vacancy, it will be filled in accordance with the provisions of this Rule 12."

Section 12(a) (b) and (c) sets forth that:

"(a) Employees not used on any given day, in accordance with the provisions of Section 6, may be placed in training on positions for which they have not previously qualified."

"(b) Except as provided in Subsection (c) of this Section 12, employees used to train on positions for which they have not previously qualified or for the purposes of refamiliarization, shall be entitled to payment at the rate of their extra board position or their guaranteed rate, if such is applicable, whichever is greater."

"(c) In order to provide adequate training on positions, employees used in accordance with this Section 12 will be held by the Carrier in such capacity to train on the same position for which initially called, and during the period so held, employees shall not be paid less than they would have earned had they not been held, exclusive of overtime."

"NOTE: The term same position for which initially called as used in this Subsection (c) is interpreted to mean that employees may be held in such capacity to train on similar positions on tricks other than the one for which initially called."

The Carrier maintains that no Section of the Rule or Agreement restricts Management from determining the way in which work is to be performed.

Carrier acknowledges that Zoned Extra Board employees are assigned in the afternoon for vacancies occurring the following day. There are many occasions when all the Extra employees cannot be utilized.

The Carrier also maintains there was nothing arbitrary or improper in the practice implemented which required unassigned individuals to report mornings to fill unanticipated vacancies.

Carrier asserts that it is to their disadvantage not to utilize Extra employees in available vacancies or training, since it has agreed to pay each Extra employee a minimum of forty (40) hours per week whether or not they are utilized for the purpose intended.

Carrier also asserts that the disputed practice had also been established at the Baltimore General Offices without it being subject to claims.

Carrier further asserts that the Organization did not and could not meet its burden of proof to show a violation of a specific Agreement Section; or, that Agreement restrictions exist prohibiting Extra Board members to report daily for duty.

The Board is of the opinion that there is not any Section of the Agreement which restricts Management from the practice in dispute. The Board particularly notes that the Carrier is paying the employees a minimum of forty (40) hours per week.

There is no evidence to support the contention that the practice is harassment or arbitrary. The parties agree that all vacancies for work or training were filled when available. The fact that there are or will continue to be instances where no training or vacancies are available, does not restrict the Carrier's right to require Extra Board employees to report daily in the manner established.

The Board is not persuaded that the practice constitutes an undue burden or inconvenience to the employees involved. In the Board's view, the purpose of the practice is to enable the Carrier to fill any unanticipated vacancies occurring daily and therefore is not a violation of the Agreement.

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

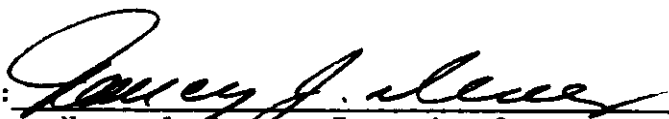
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1986.