

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10086) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at La Junta, Colorado on December 24, 25, 31, 1984 and January 1, 1985, when it required and/or permitted another employee to perform the work of Position No. 6008 on said days in which the Carrier had declared the positions blanked, and

(b) Claimant B. J. Swentzell shall now be compensated for eight (8) hours' pay at the time and one-half rate of RFO Clerk Position No. 6008 for December 24, 25, 31, 1984 and January 1, 1985. Said compensation shall be in addition to any other compensation Claimant may have received for those dates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant holds RFO Clerk Position No. 6008 and was assigned, as part of a five-day relief schedule, to work on Monday and Tuesday, 3 p.m. to 11 p.m. Claimant's position was blanked on holidays December 24-25 and December 31, 1984, and January 1, 1985 (Mondays and Tuesdays). On these dates, the Organization alleges that some work normally assigned to Position No. 6008 was performed by RFO Clerk on Position No. 6112. The work involved was relatively minimal in quantity, but the Organization contends that the Claimant should have been permitted to work on these days.

The right of the Carrier to blank a position on a holiday is established by Rule 27, which reads as follows:

"Regularly assigned employees shall not have their working days reduced below five per week, excepting that such days may be reduced in an individual's work week in which a designated holiday(s) falls on one of his assigned work days, to the extent of such holidays. . . ."

The Organization does not dispute the Carrier's right to blank a position on a holiday, provided that the work of the employee whose position is blanked is not performed by other employees. This is established in Rule 32-G which states in part as follows:

"32-G. In working overtime before or after assigned hours employees regularly assigned to class of work for which overtime is necessary shall be given preference, i.e.:

(1) Occupant of position to have rights to overtime work on his position. . . .

NOTE: This principle shall also apply to working on holidays."

This principle is supported by numerous Awards cited by the Organization. As stated in Third Division Award 7255, "A position is blanked only when no one works it."

The Carrier's contention is that the two positions involved herein, (Nos. 6008 and 6112) are both bulletined as RFO Clerks, and that the work performed on the four holidays was work encompassed in either of the RFO Clerk's duties. Thus, the work is properly performed by the employee in either RFO Clerk position, according to the Carrier.

In support of its position that the work involved belonged only to Position No. 6008, the Organization submitted descriptions of the work involved in both positions. These descriptions were prepared in 1986, after completion of the claims handling procedure on the property. The Carrier properly objects to consideration of these descriptions by the Board, based both on their untimeliness and the fact that they do not necessarily describe the duties as performed one year earlier.

The Board finds that these descriptions are not a timely part of the dispute. Nevertheless, review of such descriptions does show that work involved is in fact performed by Position No. 6112 while both employees are on duty and while the occupant in Position No. 6008 is otherwise engaged.

The particular facts in this dispute do not lead to the conclusion that the work cited was improperly performed by the RFO Clerk who was on duty. This is not a case of work performed by an employee in another classification or by a supervisor, as is true in instances in many other cited Awards. In sum, one RFO Clerk remained on duty on the holidays, while the other RFO Clerk (the Claimant) was relieved for the holidays. The work performed was in the RFO Clerk classification, both positions in question having been identically bulletined. As stated in Public Law Board No. 843, Award No. 37:

"There can be no question that unless the Carrier has restricted itself by Agreement, the Carrier can combine the work to be performed by regularly assigned employees, whereas in the dispute before us, the employees were of the same class and performed the same type of work at the same location."

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 20th day of July 1988.