Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27498
THIRD DIVISION Docket No. CL-26781
88-3-85-3-539

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10041) that:

(1) Carrier violated the Agreement when on December 31, 1983, it required Mr. M. D., Ledoux, and again on November 30, 1984 and February 2, 1985, it required Mr. A. F. Morin to suspend work from their regular assignments and absorb overtime by performing duites (sic) of the previously abolished Sealer/Porter assignment.

(2) Carrier shall now be required to compensate both Mr. Ledoux and Mr. Morin two (2) hours pay at the punitive rate of Porter for each date listed above that it violated the Agreement."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

To understand the instant claim it is necessary to review Award 1 of Public Law Board 3178 involving these same parties. The Claimant in Award 1 was a female and was regularly assigned as a Yard Clerk/Machine Operator at Carrier's Italy Yard Office in St. Albans, Vermont. Notably it was an "indoor job." At this particular location, Carrier employed a day and afternoon Sealer-Porter position that was assigned the duties of opening, closing and sealing boxcar doors. However, as a result of a paper strike in Canada, which reduced the carloads of paper coming into the U. S., the Carrier abolished the second shift Sealer/Porter position. Thereafter, when boxcar doors were required to be opened on the afternoon shift the day Sealer Porter was called. On or about the claim date the Carrier ceased to use the 0600 Sealer/Porter on overtime to perform the duties of opening and closing car doors. The Board found relevant Article 46 and a February 21, 1979 letter of interpretation applicable to Article 46. Article 46 states:

The on duty Carrier Officer would select an inside desk employee to suspend regular assigned duties to go out into the yard and open and close boxcar doors. The Public Law Board found relevant Article 46 and a February 21, 1979, Letter of Interpretation applicable to Article 46. Article 46 states:

> "Article 46 Absorbing Overtime
>
> 46.1 Employees will not be required to suspend work during regular hours to absorb overtime.
>
> Note: Under the provisions of this article, an employee may not be requested to suspend work and pay during his tour of duty to absorb overtime previously earned or in anticipation of overtime to be earned by him. It is not intended that an employee cross craft lines to assist another employee. It is the intention, however, that an employee may be used to assist another employee during his tour of duty in the same office or location where he works and in the same seniority district without penalty. An employee assisting district without penalty. An employee assisting another on a position paying a higher rate will receive the higher rate for time worked while assisting such employee, except that existing articles which provide for payment of the highest rate for entire tour of duty will continue in effect. An employee assisting another employee on a position paying the same or lower rate will not have this rate reduced."

The February 21, 1971 letter states:

> "Referring to Article VI Absorbing Overtime of the Agreement signed today by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and the Carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and the National Railway Labor Conference:
>
> Your organization has expressed the fear that this provision could be applied so as to require an employee to render assistance in the performance of work which might be considered hazardous or demeaning to that employee, or which might require clothing which that employee does not ordinarily wear, and in addition to one or more of the foregoing characteristics which would be foreign to the work which that employee ordinarily performs.
>
> Examples of such applications of the provisions might be:

(1) Assignment of a female office employee to perform outside work at a location which might place her in a position on unaccustomed hazard.

(2) Assignment of a desk worker to perform labor such as cleaning cars that would require work clothing.

(3) Assignment of an office employee whose ordinary assignment does not include the cleaning of lavatories or toilets to perform such work.

This letter is for the purpose of assuring you that it is not the intent of the carriers to apply Article VI - Absorbing Overtime in the manner herein outlined."

The Public Law Board held in pertinent part as follows:

"While Carrier may, by bulletin, require employees to perform "other miscellaneous duties" the assignment of those duties may not violate any specific Article of the Agreement. Thus, the central issue is whether Claimant's performance of Porter/Sealer duties on February 8, 1981 violated Article 46. We rule that it did.

The record evidence reveals that Carrier had previously assigned employees on an overtime basis to perform duties similar to those carried out by Claimant on February 8, 1981. In addition, the evidence suggests that to reduce sits overtime costs, Carrier required office workers such as Claimant to open, close and seal railroad cars. Thus, Claimant was literally "absorbing overtime" when she was required to suspend her normal work to perform Porter duties on the day in question. This work would clearly have been performed on an overtime basis.

Finally, we are in accord with Carrier's assertion that Claimant did not cross craft lines or seniority districts when she performed Porter duties on February 8, 1981. However, Rule 46 may be violated even if such crossing of crafts or seniority districts does not occur. Simply stated, Rule 46 is violated if work is suspended to absorb overtime. Such is the case here and Claimant must be compensated accordingly.

However, appropriate compensation does not appear to us to be eight hours' pay at the Porter rate. This amount is excessive. Clearly, the porter duties performed by Claimant on February 8, 1981 took far less time than eight hours to complete. Thus, an appropriate remedy is to grant Claimant a call, or three hours' pay at the Porter rate, in accordance with the provisions of Article 44 Calls."

Subsequent to the issuance of Award 1, the Carrier abolished a number of clerical positions on October 5, 1983, and simultaneously reestablished ten (10) of the positions with a more detailed explanation of their brief description of duties. In this regard, all ten (10) positions specifically set forth the duty of "opening and closing boxcar doors" in their job description. Of the ten (10) positions readvertised in this manner Claimant Ledoux bid on the 1500 Car Control Clerk #4 assignment and was awarded such position on November 22, 1983. On December 31, 1983, Claimant was required to perform the disputed duties of opening and sealing boxcar doors on Train #444. On November 5, 1984, Claimant Morin was awarded the 1500 Crew Caller/Car Control Clerk which was also one of the above-mentioned positions. On November 30, 1984 and February 2, 1985, he was required to perform the Sealer/Porter duties of opening and closing boxcar doors on Train #444. The claim protested the assignment of these duties and requested two hours pay.

The Organization argues that the mere assignment of outside duties to an inside desk position, regardless whether they are assigned as in Award 1 or by bulletins, violates Rule 46. In this regard they claim the Carrier is circumventing Award 1. It is their position the instant case and Award 1 are analogous and essentially the same in all respects.

The Carrier argues that the instant case and Award 1 are not analogous. In Award 1 the Claimant was required to suspend work on her job and perform duties that were not ordinarily part of her position by bulletin. In this case they point out the Claimants weren't required to suspend their duties to open and close doors since subsequent to the rebulleting these were duties specifically assigned to their positions. In this regard they argue it is one of the functions of Management to deploy its personnel in a manner which will provide the most efficient utilization of staff.

It is the opinion of this Board that there is nothing in Rule 46, the Letter of Understanding, Award 1 of Public Law Board 3178 or the Basic Labor Agreement (in so far as this record reveals) that would prevent the Carrier from abolishing a position and distributing its duties on a permanent-bulletined basis to other positions. It seems that if the Organization had its way that the Carrier could never abolish a position and that Award 1 permanently assigned the job of opening and closing doors to the "Porter/Sealer" position, or in the absence of such an employee, it could only be assigned to others with a penalty. Their argument also implies that outside duties can never be assigned to inside jobs.

They are plainly wrong since these circumstances are clearly distinguished from those in Award 1. Rule 46 doesn't freeze jobs and their duties in time forever. Management has the basic right to assign job duties among positions on a permanent basis. Absent a specific restriction on this right in the Labor Agreement, they may even combine inside and outside duties.

Rule 46 does not act as a bar to the exercise of this right. First of all, Rule 46 only prevents the Carrier from suspending the work or pay of an employee to avoid paying earned or anticipated overtime to be earned by that employee. It also makes clear that employees can be used to assist other employees; with certain restrictions. This rule plainly does not prevent such assistance, it sanctions it, even if the purpose is to accomplish work so as to eliminate the need for overtime. The restrictions in the rule on rendering this assistance are properly set forth and need no explanation. The letter of February 25, 1971, made clear other restrictions. The letter barred temporary use of employees to assist others if the work would be hazardous, demeaning, require special clothing, or be foreign to their normal work. On this basis the letter of February 25, 1971, would prevent the Carrier from using one employee to help another under the facts present in Award 1. Yet, none of these restrictions apply in this case.

This case does not involve either an employee suspending work on their own job to avoid overtime on their own job, nor does it involve the assignment of an employee to assist another employee. It involves the abolishment of a position and distribution of duties on a permanent basis to other positions. Thus, this is something that Rule 46 does not prevent.

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 22nd day of September 1988.