

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10475) that:

1. Carrier violated the effective agreement when it failed to call Clerks K. Deitrich and A. Raymond to fill the position of Clerk HF Office on December 13, 1988, but rather allowed unassigned employee F. Colosimo to fill the position.

2. Carrier shall now compensate Messrs. Deitrich and Raymond four (4) hours pay each, at the time and one-half rate of Clerk HF Office for December 13, 1988.

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.

The essential facts are not in dispute. These show that for the week of December 12, 1988, the regularly assigned third shift (11:00 P.M. to 7:00 A.M., Tuesday through Saturday, with Sunday and Monday rest days) Clerk was on vacation. On December 13, 1988, the unassigned File Clerk working the first shift (7:00 A.M. to 3:00 P.M.) as additional help was relieved from the File Clerk position and assigned to work the third shift vacation vacancy.

The Board notes that a number of contentions have been advanced to this Board by the Organization which were not presented on the property. Therefore, these will not be considered in our deliberations in accordance with long-standing practice.

The Organization contends that, pursuant to that part of Rule 4(G) which states: "...the senior employees working in the same type of work on adjacent tricks shall be assigned to work on the blanked rest day...", the senior employees on the two adjacent shifts should have been offered the opportunity to fill the vacation vacancy.

We agree with the Carrier in this dispute and note that at no point did the Organization refute on the property the Carrier's basic argument that when there are no unassigned employees available to fill vacancies in a three shift operation at straight time, such vacancies may be filled by assigning the senior employees of the two adjacent tricks. In so asserting, the Carrier relied upon Rule 4(c) which reads:

"(c) When there are no unassigned employees available to fill vacancies in three-trick operation at straight time, such vacancies may be filled by assigning the senior employees of the two (2) adjacent tricks to work four (4) hours overtime each, continuous with, before or after, their regular hours of assignment."

The Carrier, also on the property, relied upon Award 1 of PLB No. 3712 which dealt with a similar case and had construed the term "may" as permissive when it in part held:

"Terms such as 'may', 'should', 'will', or 'must' have specific purpose particularly where jointly-drawn provisions of a collective bargaining agreement are concerned. It is well-settled that 'may' is permissive in nature implying the reservation of the final authority. The placement of this word in Rule 4(b) has the result of leaving this provision indefinite as to assignment...."

For all of the foregoing, the Claim is denied.

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 23rd day of January 1992.