

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization
(GL-10369) that:

(1) Carrier violated the rules of the current Clerks' Agreement at San Bernardino, California on May 15, 1988, when it failed and/or refused to compensate Ms. Reynolds the proper rate of pay for being diverted from her Position No. 5001 Chief Crew Clerk to that of Position No. 6068 Crew Clerk which works the Barstow desk from 7:00 a.m. to 3:00 p.m., and

(2) Claimant shall now be compensated eight (8) hours' pay pro rata rate of Chief Crew Clerk for May 15, 1988, in addition to any other compensation she may have received for this day."

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.

On May 15, 1988, Claimant was the regular incumbent of PAD Chief Crew Clerk Position No. 5001 with hours from 6:00 A.M. to 3:00 P.M. Wednesday through Sunday. On that date Claimant performed the work of Crew Clerk Position No. 6068 with hours from 7:00 A.M. to 3:00 P.M. the incumbent of which was absent due to illness. Claimant was compensated at the higher rate of her PAD position. The Claim in this case followed.

Rule 46-B of the applicable schedule Agreement provides in pertinent part:

"It will be optional with the Company to fill, partially fill or blank the position of an employee who is absent account his personal sickness, If the Carrier elects to fill the position in its entirety, appropriate rules of the Agreement will be followed. . . . The use of other employees on duty and on other positions to perform a portion of the duties of the employee absent under this Rule 46, is permissible. . . ."

Rule 46-B governs this Claim. The incumbent of the position filled by Claimant was absent due to illness and was compensated with sick leave under Rule 46. Claimant was utilized to fill the position in its entirety, to partially fill the position or to perform a portion of the duties of the absent employee while occupying her regular position of Chief Crew Clerk.

The Carrier maintains that the Organization has failed to sustain its burden of proof with respect to the critical point that the Carrier utilized Claimant to fill the position in its entirety. Proof of that point is essential to sustaining the Claim in this case inasmuch as Rule 46-B provides that in such a circumstance the ". . . appropriate rules of the Agreement will be followed." Those rules include Rule 14 and Rule 32-N upon which the Organization relies to support the Claim. The Carrier, however, maintains that Claimant performed only a portion of the work of Crew Clerk Position No. 6068 on May 15, 1988.

The Organization argues that the very nature of the work of a Crew Clerk forces the conclusion that Claimant performed all and not just a portion of the work of that position on May 15, 1988. The Organization emphasizes that "[T]he duties of dispatching or calling crews and the preparation of records attendant thereto must be performed on a current basis and cannot be postponed or left for a subsequent shift to accomplish." Moreover, the Organization points out, the Carrier has made no assertion nor furnished any proof that anyone other than Claimant performed any of the duties of Crew Caller Position No. 6068 on May 15, 1988.

We believe the Organization has the stronger position. The nature of a Crew Clerk's work is such that rarely can the work be left for a subsequent shift. Inasmuch as the record contains no evidence that anyone other than Claimant performed the work of the Crew Clerk position on May 15, 1988, the record supports the inference that Claimant performed all work of the position. While the Carrier alleges that she performed only a portion of such work, that allegation is without evidentiary support in the record. The Carrier had the burden to support its allegation with evidence, and it failed to do so. We must conclude that the Organization has sustained its burden of proof that the Carrier filled the Crew Clerk position in its entirety with

Claimant on May 15, 1988, and that the Carrier has failed to sustain its burden to prove that Claimant performed only a portion of the work of the Crew Clerk position on that date.

Accordingly, as provided in Rule 46-B, the ". . . appropriate rules of the Agreement will be followed." The parties' December 7, 1977 agreed to understanding of the application of Rule 32-N of the Agreement applies in situations where in the event of an emergency as defined in Rule 32-N, which includes illness of the incumbent of a position ". . . an employee is taken off his assignment to protect a vacancy on a position which cannot be filled in the normal way without interruption of required service." That is precisely the case before us. Inasmuch as neither Claimant's Chief Crew Clerk position nor that of the Crew Clerk was covered by the Hours of Service Law, Section (3)(A) of the understanding applies. It provides that the employee utilized by the Carrier shall receive ". . . eight pro rata hours at the rate of his regular assignment" in addition to compensation provided in Section (1) of the understanding. The pay sought by the Claim in this case is fully supported by Section (3)(A).

The Carrier maintains that the pay sought by the Claim in this case constitutes a penalty because Claimant suffered no monetary loss and to award such pay to Claimant would be contrary to the "make whole" purpose of such an award. However, the Carrier's argument ignores the plain wording of Section (3)(A) of the parties' agreed upon understanding of Rule 32-N of the Agreement.

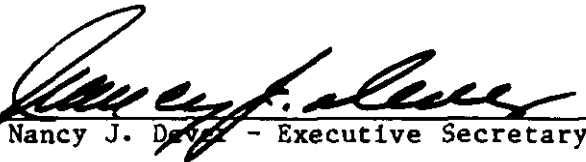
In the final analysis we must conclude that the Claim in this case has merit.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.