

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29710
Docket No. CL-29621
93-3-90-3-605

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the
Organization (GL-10528) that:

CLAIM NO. 1

- (a) Carrier violated the rules of the current Clerks' Agreement at Topeka, Kansas, on September 30, 1989 when it failed and/or refused to call and use Claimant to perform the duties of Head Machine Operator Position No. 6150, and
- (b) Claimant Barton shall now be compensated eight (8) hours' pay at the pro rata rate of Position No. 6150 for September 30, 1989, in addition to any other compensation she may have received for this day.

CLAIM NO. 2

- (a) Carrier violated the rules of the current Clerks Agreement at Topeka, Kansas, on October 2, 1989 when it failed and/or refused to call and use Claimant to perform the duties of Head Machine Operator Position No. 6185, and
- (b) Claimant Barton shall now be compensated eight (8) hours' pay at the pro rata rate of Position No. 6185 for October 2, 1989, in addition to any other pay 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 employe or employes involved in this dispute are respectively carrier and employe 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 Organization filed a first Claim on October 5, 1989, on grounds that the Claimant could have worked Position 6150, Head Machine Operator, on Saturday, September 30, 1989 "...had (the Carrier) called (her)." In denying the Claim, the Carrier states that the incumbent of Position 6150 marked off sick on the day in question and no one was assigned to his position on September 30, 1989. However, another Clerk who held assignment as a PADO Console Operator did perform a portion of the duties associated with Position 6150 which were incidental to the PADO position. At the time the Claim was filed the Claimant was on layoff. On appeal, the Organization alleges that the Carrier violated a number of Rules of the Agreement, but more specifically, Rule 14(C) "...when it failed to assign Claimant to the short vacancy of Position 6150." The Carrier argues that it had not violated this Rule. The Carrier further argued that its actions were protected by Rule 46(B).

A second Claim was filed by the Organization, also on October 5, 1989 on grounds that she should have been called on October 2, 1989, to work Head Machine Operator Position 6185 on that date, 11:00 AM to 7:00 PM shift, but that the Carrier instead had the work done by a PADO Console Operator whose duties were other than those of Position 6185. The Carrier's denial of this second Claim was based on the fact that a hardware breakdown occurred on October 2, 1989, which caused slow processing and extended delays on work normally handled by the third shift. The PADO Console Operator on the third shift handled a portion of Lead Operator functions on that day, but because of the processing problems, very little of any work was actually done on this shift on October 2, 1989. According to the Carrier, no short vacancy occurred. The Agreement provisions applicable to this second Claim are comparable to those which apply to the first one filed by the Organization. Both of these Claims are being considered jointly by the Board.

The Agreement provisions at bar in this case state the following, in pertinent part:

"Rule 14

(A)

Vacancies of 15 work days or less duration shall be considered 'short vacancies', and if to be filled, shall be filled as hereinafter provided in Rule 14.

(C)

When providing short vacancy relief the following order of precedence will be observed:

(1) By calling the senior qualified off-in force reduction employee available at straight time rate not then protecting some other vacancy. (Such off-in-force reduction employee not thereby to have claim to work more than 40 straight time hours in his work week beginning with Monday)."

"Rule 46

(B)

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 or under provisions of Rule 46(E) and is receiving an allowance under this Rule 46. If the Carrier elects to fill the position in its entirety, appropriate rules of the Agreement will be followed. If the Carrier elects to partially fill a position on an overtime basis, Rule 32(G) will apply. 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....

NOTE: Solely for clarification of this Rule 46(B) 'other employees' is defined on those employees assigned to other positions and on duty at any work location at the point where the vacancy occurs."

Rule 14(A) gives the Carrier the option to fill or not fill short vacancies of 15 days or less. It is not mandated to do so as the Organization alleges in both Claims. Further, there is no evidentiary showing that the work of either position in question, cited in either of the claims, was done in full on the dates in question. The Carrier consistently argued that only a portion of the work was done. This has never been rebutted by the Organization. Since only a portion of the work was done, in both cases, protections for Carrier's actions on both dates are also found in the provisions of Rule 46(B). Upon the record as a whole the Board must conclude that the Claims cannot be sustained.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.