Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30462
Docket No. CL-29907
94-3-91-3-289

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation-Communications International Union
(
(CSX Transportation, Inc. (former Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10589) that:

1. Carrier violated the Agreement on April 13, 1990, Good Friday, a national holiday under the Agreement, when it laid in Position No. 107 TSA at Ravenna, Kentucky, occupied by senior employe Mr. P.W. Lawson, with the incumbent of that position performing work assigned and performed daily by the occupant of Position No. 107.

2. As a result of Carrier's action, it shall compensate Clerk P.W. Lawson for one (1) day's pay at time and one-half of Position No. 107 for April 13, 1990."

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 employee 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 fact situation which existed in this dispute was as follows:

1. Claimant was assigned to Transportation Service Agent (TSA) Position No. 107 at Ravenna, Kentucky;

2. Mr. H. Baker was assigned to Assistant Transportation Service Agent (ATSA) Position No. 141 at Patio, Kentucky;

3. On April 13, 1990, Good Friday, a national holiday under the Agreement, the TSA position was laid in and the incumbent was allowed holiday pay under the terms of the Agreement;

4. The ATSA position was worked on the holiday and performed some of the duties of the TSA position;

5. Claimant is senior to the incumbent of the ATSA position, but was not qualified to perform all of the customary duties of the ATSA position;

6. The junior incumbent of the ATSA position was qualified to perform all of the work performed on the holiday.

Neither party to the dispute challenged any of these facts.

The applicable provisions of the Agreements which are germane to this case are as follows:

"Rule 26 - HOLIDAY RULE

* * *

Section 2.

* * *

(b) Under the provisions of paragraph (a) of this Section 2, if it becomes necessary to perform work on an assignment on one of the holidays specified in this Rule 26, the incumbent of the position shall be given preference to such work.

* * *"

"ADDENDUM NO. 3-B LETTER OF UNDERSTANDING

October 9, 1980
D-323-Gen

Mr. C.W. Shores, Vice General Chairman
Brotherhood of Railway & Airline Clerks
343 West Kenwood Way
Louisville, Kentucky 40214

Dear Sir:

In conference today, October 9, we discussed protecting carrier's service on holidays.

It was agreed that, on holidays when a reduced force is required, carrier will decide the areas in which work will be required and the number of employees required to accomplish this work. The employee assigned to the highest rated position(s) in that area who is qualified to perform all work required in that area will be required to work on the holiday. Where two such employees in that area are rated the same and both are qualified on all work required, the senior employee will be required to work on the holiday.

In the event the senior employee requests not to be required to work on the holiday, junior qualified employees in seniority order will be offered the holiday work and paid the rate applicable to the highest rated work performed during the shift worked on the holiday. If all in that area decline to work, the junior qualified employee will be required to work.

If the above sets forth our understanding, please sign and return one copy of this letter.

Yours truly,
John M. Sale
Director of Labor Relations

AGREED:

C.W. Shores,
Vice General Chairman, BRAC"

In addition to Rule 26 and the Letter of Understanding dated October 9, 1980, the Carrier by notice dated September 5, 1984, issued a letter of procedure relative to implementation of the holiday work forces rules which provided as follows:

"SEABOARD SYSTEM RAILROAD
OFFICE OF: ASSISTANT TRAINMASTER/TSC
LOCATION : RAVENNA, KY.
DATE : SEPTEMBER 5, 1984

CLERICAL FORCES
EK SUBDIVISION

Effective immediately the following procedures are being implemented concerning the Holiday work force.

1. In the future those individual on positions being worked will be notified; all other positions will be considered as being laid down.

2. Requests to be off with pay on the holiday will be granted strictly on a seniority basis.

3. All requests to be off with pay on the holiday must be addressed to the Asst. Trainmaster/TSC and must be submitted no less than three (3) days before the holiday. Hazard and Dent, Ky. to notify the Trainmaster at Hazard, Ky.

4. Work Areas are defined as follows:

Lexington, Ky. Area consist of the entire clerical work force.

Hazard, Ky. Area consist of the entire clerical work force.

Dent, Ky. Area consist of the entire clerical work force.

Ravenna, Ky. Area consist of three distinct sections:

A - Chief Clerk and Assistant Chief Clerk
B - RWC, Teleprocessing, and Utility Clerks
C - Crew Caller and Operator."

The record indicates that the "Chief Clerk and Assistant Chief Clerk" titles mentioned in paragraph 4.A. of the 1984 letter of procedures are now known as the Transportation Service Agent and the Assistant Transportation Service Agent.

It is the position of the Organization that, prior to December 16, 1988, both positions here in question were "headquartered" at Ravenna. However, by agreement of the parties, the TSA position was held at Ravenna and the ATSA position was thereafter "headquartered" at Patio, Kentucky, some 30 miles from Ravenna. Therefore, it argued, that Carrier was in violation of Rule 26, Section 2(b) of the Agreement when it laid in the TSA position at Ravenna and used the ATSA position at Patio to perform work of the TSA position. It contended that "Carrier had no contractual authority to use an employee outside the environs of Ravenna to perform duties assigned to TSA Lawson." (emphasis added). It charged that past practice "did not include areas outside a terminal."

The Carrier argued that because of the fact that the majority of the work to be performed on the holiday was at Patio, and because the incumbent of the ATSA position was "the only one of the two employees who was qualified to perform the duties at Patio," and because the incumbent of the ATSA position was also qualified to perform the work of the TSA position which was required to be performed on the holiday, he - the ATSA incumbent - was used in accordance with the provisions of the October 9, 1980 Agreement and the 1984 letter of procedures. Carrier continued its argument by contending that item 4.A. of the 1984 letter of procedures defines the two positions as being in the same "area in which work will be required" as set forth in the 1980 Agreement.

In its presentation to the Board, the Organization submitted several Awards of the Third Division each of which, it says, supports its contention that when a position is not actually blanked on a holiday and is worked by another, the incumbent of the blanked position is entitled to eight hours at the punitive rate.

The Board studied all of the cited Awards and takes no exception to the logic or conclusions found therein. However, none of the cited Awards are representative of a fact situation which is similar to that which exists in this case. Here the parties' basic Agreement requires that when it becomes necessary to perform work of an assignment on a holiday, the incumbent of the position shall be given preference to the work. That basic Rule requirement on this property was amended by Agreement of the parties dated October 9, 1980, and Carrier was thereafter given the unilateral rights to decide the "areas" in which work would be required on a holiday and the number of employees which would be required to do the work. The 1980 Agreement clearly stipulates that the employee "who is qualified to perform all work required in that area" will be used.

In its implementation of this Agreement amendment, Carrier defined the two positions here in question as being in the same "area." It is interesting to note the choice of words used by the parties in the 1980 Agreement. The word "areas" was used. The words "headquarters" or "environs" or "terminal" were not used. These words clearly are not synonymous with the word areas and the usual and customary usage of these words is not the same. There is no evidence in the case record to support the Organization's contention of a practice of not including areas outside of a terminal when applying the holiday work Rules. There is no evidence in the case record to suggest that Claimant was "qualified to perform all work required" on the holiday. Neither is there anything found in the December 17, 1988 Memorandum Agreement, which changed the headquarters of the ATSA position to Patio, that in any way abrogated or otherwise impinged upon Carrier's right to define the "areas in which work will be required" on holidays.

Therefore, on the basis of the relative convincing force of Agreement language and evidence, it is the Board's conclusion that the use of the junior qualified employee to perform service on the holiday under the circumstances present in this case did not violate either the rights of Claimant or the terms of the Agreement. The claim as presented is denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.