

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36974
Docket No. CL-37674
04-3-03-3-27

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Kansas City Southern Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the System Committee (GL-12955)
that:

1. Carrier violated Rule 23 (s) (2) and other rules of the Agreement between KCS and TCU on October 25, 1999, when it blanked a job on this date and added the duties of this job to the assigned position of Ms. Angela Dison. Ms. Dison was not compensated for these additional duties in accordance with the Agreement.
2. Carrier shall now compensate Ms. Dison for 4 hours pay at the pro rata rate for performing these additional duties. The job pays \$137.22 per 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 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 were given due notice of hearing thereon.

On December 13, 1999, the Organization claimed that the Carrier violated Rule 23(s)(2) of the applicable Agreement on October 25, 1999. It alleged that when the Claimant reported for duty on October 25, 1999 the Manager assigned the Claimant to perform the work of Position No. 36 (the AEI desk) in addition to the duties of her regular Position No. 83 (the Industry DGNO desk). The Organization further alleged that the Claimant divided her time equally between the two jobs.

The Carrier argued that the Claimant's position title is Customer Service Representative and the Shreveport Customer Service Center is the Claimant's assigned work location. The Carrier, therefore, concluded that the Claimant did not change her assigned work location. The Carrier elaborated that Rule 23(s)(2) was inapplicable to the Claimant because she was not away from her assigned work location. The Carrier alternatively argued that it could properly blank Position No. 36 and assign another employee to accomplish the duties of the blanked position inasmuch as the incumbent was taking Sick Leave pursuant to Rule 47.

Rule 23(s)(1) and Rule 23(s)(2) of the applicable Agreement provide:

"When it is necessary to blank a position covered by the Scope Rule, the following will apply:

- 1) Carrier may blank a position provided the duties of the position are also blanked or the employee is receiving compensation as provided by Rule 47, however in the event Carrier finds it necessary for other employees not covered by BRAC Agreement to copy train orders, message of record including track car lineups, or to transmit a message of record at that Station during the assigned hours of the blanked position, then the Extra Board employee that would have worked had the position not been blanked, or if no Extra Board employee is available, then the senior idle regularly assigned qualified employee who has copying train orders as a part of his assignment at the nearest location will be compensated 3 hours at the pro rata rate of the blanked position for each occurrence. If the above referred to occurrence takes place outside of the regular assigned hours of the blanked

position, then the above designated employee shall be paid a minimum of 3 hours at the pro rata rate for each occurrence.

- (2) In the event that any of the assigned duties of the blanked position, other than those specified in (1), are performed the Extra Board employee that would have worked had the position not been blanked will be compensated 8 hours at the pro rata rate. If no Extra Board employee is available and the work is performed by an employee covered by this Agreement, then that employee shall be compensated additional pro rata allowance for actual time away from his assigned work location, however, if the assigned duties of the blanked position are performed by an employee not covered by this Agreement, then the senior qualified employee at the nearest location will receive an additional 8 hours at the pro rata rate. It is understood that all payments specified above will be in addition to any other payments the employee may be entitled to on that date. It is further understood and agreed that the above payment will be automatic to the employee entitled to receive same and that copy of notice of payment will be furnished to the Division Chairman and General Chairman in addition to the employee.

NOTE (1) Definition of each occurrence as it appears above is:

For every train order copied, every message of record including track and/or motor car lineup copied and for message of record transmitted, or switch list or interchange report prepared, a separate penalty will be allowed except that it is agreed that no more than one 8 hour or 3 hour payment, whichever applies, will be allowed any one individual if more than one occurrence occurs at the blanked location during a consecutive two (2) hour period.

NOTE (2) At locations other than an Extra Board Headquarters point if no Extra Board employee is available and it is necessary that part of the duties of the blanked position be performed, Carrier may use an employee from an adjacent station to perform those duties. If an on duty employee is used, that employee shall receive compensation for mileage traveled and shall receive the additional allowance on the

minute basis at the pro rata rate of the position worked or his position, whichever be the higher.”

Rule 47(2) entitled, Sick Leave of the applicable Agreement reads:

“(2) It will be optional with the Company to fill, partially fill or blank the position of an employee who is absent account bona fide 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 (during their regular assigned hours or on overtime) a portion of the duties of the employee absent under this Rule 47, is permissible. It is understood that in the application of this Rule 47(2) the provisions of Rule 40 of the current schedule agreement and Article VI of the National Agreement dated February 25, 1971, will be followed.

NOTE: Solely for clarification of this Rule 47(2) ‘other employees’ is defined as those clerical employees assigned to other positions and on duty at any work location at the point where the vacancy occurs.”

Rule 47(2) clearly and unambiguously states that when an employee is absent due to sickness, the Carrier has the option to fill, partially fill, or blank the position of the absent employee. Rule 23(s)(1) grants the Carrier the discretion to blank a position when an employee is receiving compensation per Rule 47. More importantly, Rules 23(s)(1) and 23(s)(2) have an exception that renders Rule 23(s) harmonious with Rule 47. Subsection two of Rule 23(s) generally provides that an employee who performs the assigned duties of a blanked position is entitled to an additional allowance. The exception arises if the incumbent of the blanked position is being compensated with Rule 47 sick leave. Concomitantly, Rule 23(s)(2) is inapplicable if the assigned duties of the blanked position are worked while the incumbent is receiving sick leave compensation as “. . . specified in (1).” Stated differently, if the incumbent of the blanked position is off work due to sickness and receiving compensation under Rule 47, the Carrier is exempt from paying the additional compensation provided by Rule 23(s)(2) to the employee who performs some or all of the duties of the blanked position.

Close examination of the evidence exchanged on the property demonstrates that the parties reasonably presumed that the incumbent of Position No. 36 was receiving

sick pay pursuant to Rule 47. In its Submission to the Board, the Organization noted that the employee marking off sick did not claim compensation pursuant to Rule 47. No evidence was presented on the property to substantiate the Organization's assertion in its Submission. Thus, the Board cannot consider the Organization's factual assertion that the incumbent did not receive sick leave, because it raised the assertion for the first time in its Submission.

Therefore, in accordance with our analysis and application of Rules 47(2) 23(s)(1) and 23(s)(2) the Carrier was not required to pay the Claimant with additional compensation for performing the duties of Position No. 36 as well as performing the duties of her regularly assigned position.

AWARD

Claim denied.

ORDER

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 21st day of April 2004.