Award No. 4603

Docket Award MW-4612

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement by assigning on May 22, 1946 to emergency crossing work a Sectionman with no seniority in the crossing flagman's group instead of calling Crossing Flagman E. G. Morrison who was available for service on that date:

(2) That Crossing Flagman E. G. Morrison be now paid eight (8) hours at the time and one-half rate at the basic rate in effect for Crossing Flagmen at the time of the Carrier's violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: Mr. E. G. Morrison is a regularly assigned Crossing Watchman at Lincoln, Nebraska. He is assigned to work the 8:30 a.m. to 4:30 p.m. trick six (6) days per week, the other day in the week being his assigned rest day.

May 22, 1946, was Morrison's assigned day of rest and the Carrier having no regular relief Crossing Watchman available as relief man assigned a trackman, having no seniority in the Crossing Flagmen's group to relieve Morrison, the position being of such a nature as to require seven days a week protection.

Mr. E. G. Morrison's seniority in the Crossing Watchman's group would have assured him of the right to fill the position on his rest day had the Carrier called someone who held rights to the position. The Carrier did not call Morrison although he was available and willing to work on the day in question.

The action of the Carrier in assigning an individual having no seniority in the Crossing Watchman's group to this relief work was appealed in the manner provided in the agreement and in each instance the appeal was denied.

The Agreement between the parties to the dispute dated May 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYE: Rule 1, Scope of the effective Agreement lists the respective groups that are covered in the scope of the agreement.

It will be noted that Rule 25(b), quoted above, provides that—

". . . then the employe or employes assigned to such position or positions will be assigned one day off duty in seven, Sunday if possible, and the rates of pay for such positions shall be adjusted accordingly. Where such assigned rest day is not Sunday, work on Sunday will be paid for at pro-rata rates. After such charges, if the regular occupant is required to work on such an assigned rest day, or a designated holiday, he will be paid therefor at the time and one-half rate."

Inasmuch as the Claimant was assigned one day off duty in seven (Wednesday—May 22, 1946) and for the reason that the aforequoted rule of the agreement further stipulates that "if the regular occupant is required to work" we urge that this claim is not proper.

The rest day of the Claimant's position was not a part of the Claimant's assignment and it has been held by this Board that the regular assignee has no proper claim upon the assignment of the relief employee. The agreement definitely contemplates that the regular assignee shall have no right to work the rest day of his position because of the language employed in the agreement to the effect that "if the regular occupant is required to work." We construe this language to mean that the regular occupant has no prior right under the agreement to do such work, but if the carrier should, for any reason, require the regular occupant to work his rest day, the agreement provides the compensation which should be paid for such work.

Awards of this Board have sustained the view that the regular assignee of the regular position has no particular right to work the rest day of his position. There is no rule in the agreement here controlling which required us to work the Claimant on his rest day, which rest day was not a part of his assignment. Rule 22 of the agreement of May 1, 1938 was complied with. The section laborer used held seniority under the agreement here controlling.

For the above reasons, we respectfully petition this Board to deny this claim.

OPINION OF BOARD: Due to the illness of the regularly assigned relief crossing flagman on May 22, 1946, the Carrier used a section laborer to work the assignment. The claimant is the regularly assigned six day per week crossing flagman at that location.

Rule 4 (c) provides:

"Positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining. Senior employes in the respective seniority groups will be given preference on such temporary positions."

We think under that rule that the senior employee in the appropriate seniority group is entitled to be given preference in filling temporary vacancies of the character here involved. By the provisions of Rules 1 and 2 (b) crossing flagmen and section laborers are in different and non-interchangeable seniority groups.

The claim for time and one-half pay is not proper. The penalty rate for work lost because it was given to one not entitled to it under the agreement is the rate which the regular occupant of the position would have received if he had performed the work. See our Award No. 4571.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934:

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Carrier violated the Agreement.

AWARD

The claim is sustained but at pro rata rate only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 18th day of October, 1949.