Award No. 6727
Docket No. CL-6809

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, particularly Rule 4-A-2(a) when it blanked Clerical Position G-138 located in the Pennsylvania Produce Terminal Yard, Philadelphia, Pa., Philadelphia Terminal Division, on Saturdays, August 21, 1946 to September 19, 1946.

(b) H. N. Climenson, Clerk, be allowed an eight-hour day at time and one-half as a penalty for each Saturday during this period on account of this violation.

(Docket E-474)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case held regular Clerical Position, Symbol No. G-224, located at South Philadelphia Yard, tour of duty 3:59 P. M. to 11:59 P. M. daily, relief day Wednesday. Clerical Position, Symbol No. G-138, located nearby in the Pennsylvania Produce Terminal Yard, tour of duty 11:00 P. M. to 7:00 A. M. daily, relief day Saturday, was blanked on Saturdays during the period August 21, 1946 to September 19, 1946. On September 19, 1946 the incumbent of this position was notified in writing that effective Friday, September 20, 1946, the tour of duty would be changed so that the assignment would be daily except Sundays and holidays.

OPINION OF BOARD: Carrier contends that because Claimant Climenson's assigned hours overlapped those of the subject position, he was not available to work the position on the days in question. It admits, however, that other employes were available to fill the position on the dates involved. The two positions are located approximately 2 miles apart. Claimant's own regular tour of duty did not expire until 59 minutes after the starting of the vacancy on which he contends he should have been doubled. Carrier relies on Award 3875, concerning these same parties. It also points to Rule 2-A-1(e) relating to the filling of positions or vacancies of thirty days or less duration. It asserts that any claim to be valid must be made by or on behalf of "the senior, qualified, available employe * * * requesting such * * * vacancy * * * provided this will not entail additional expense to the Company * * * except where Agreement under Rule 5-C-1 requires the use of extra employe." We sustained the claim of an employe not requesting nor meeting the qualifications of Rule 2-A-1(e) in Award 3876, holding that the method there set forth was not exclusive. We further held that failure to resort to the method prescribed by the mentioned rule did not authorize Carrier to blank the position.

Award 3875 cited by the Carrier is distinguishable because there no employe under the Agreement was available to fill the position because of overlapping assignments and in the emergency the duties were absorbed by a yardmaster. Here, employes were available even though this claimant was not.

What the Carrier states in respect to Rule 2-A-1(e) might deserve consideration beyond that given in Award 3876, if Claimant in this case was attempting to force himself into the position through assignment and we were called upon to determine his right thereto. But this is not the gist of the claim before us. Part (a) of the claim alleges a violation of the Agreement on account of the blanking of a seven-day position. Upon the authority of numerous past awards, 4447 among others, we sustain the claim on this ground.

Part (b) of the claim asserts a penalty because of such violation. Our remaining question concerns this claimant's right to assert the claim upon his own behalf although he himself was unavailable and did not have the right to the assignment.

This specific issue was not before the Division in Award 4447, cited by the parties. While there is some dictum favorable to Carrier's position in such Award, the fact remains that the claim asserted there was sustained on behalf of an employe available and eligibile to do the work. The question whether one not so qualified was not involved and any statements appearing in the Opinion to one in such circumstances was gratuitously made and not persuasive here. Several other cited awards are of this class.

We find part (b) of the claim should be likewise sustained but at the pro rata rate and not at the time and one-half rate claimed. So, because Claimant did not perform the work. Our finding regarding the right of this Claimant to assert the claim is based upon a long line of awards of which Award 1646 is typical. We there stated, in part, after finding violation clear:

> "The Carrier contends, however, that, under the rule as interpreted North was not entitled to be called. The essence of the claim is by the Organization for violation of the agreement. The claim for the penalty on behalf of North is merely an incident. That the claim might have been urged in behalf of others having, as between themselves and North, a prior right to make it, is of no concern to the Carrier. Awards 571, 1058 and 1605. That does not relieve it of the obligation to pay the rate stipulated for a call. The others are making no claim; and if they should the Carrier would not be required to pay more than once."

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

That the Agreement was violated and claim was properly asserted.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1954.