Award No. 7298

Docket No. CL-7601

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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, except as amended, particularly the Scope, and Rules 2-A-1, 3-A-1 (a) and (c), and 3-C-3 (a), by failing to allow D. W. Johnson, a regularly assigned Truck Driver at Ranken Yard, St. Louis, Missouri, Southwestern Division, to work as a Truck Driver on his rest days on January 10, 11, 17 and 18, 1953.

(b) D. W. Johnson, Claimant, be compensated eight hours pay for each day, January 10, 11, and 18, 1953, and ten hours pay for January 17, 1953, on account of this violation. (Docket W-891)

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, as amended, 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.

Mr. D. W. Johnson, the Claimant in this case, is the incumbent of a regular position of Motor Truck Driver, in the Stores Department, Ranken Yard, St. Louis, Missouri. The rest days of the position are Saturday and Sunday. Mr. Johnson has a seniority date on the seniority roster of the Southwestern Division in Group 2.

Also in existence at Ranken Yard is a position of Relief Store Attendant, incumbent, Carl L. Gier. This relief position relieves Truck Driver Johnson,

Thus it is apparent that the basis for settlement in the cited system Docket is not even vaguely similar to the factual situation presented in this case and lends no support to the Employes claim.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claims of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the provisions of the applicable Agreement particularly Rules 2-A-1, 3-A-1 (a) and (c) and 3-C-3 (a) were not violated in this case, that Carrier was properly entitled under the applicable Agreement to temporarily assign D. F. Caffey a new employe to a relief position pending the bulletining thereof and that the rules cited by the Employes in their Statement of Claim lend no support to the claim for compensation in this case.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the employes involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was regularly assigned as a Truck Driver at Ranken Coach Yard, St. Louis, Missouri, on the first trick, Monday through Friday, with Saturday and Sunday as rest days. A regularly assigned relief Stores Attendant, Carl L. Gier, was assigned to work the rest days of Claimant's assignment. Effective January 6, 1953, Gier resigned his position. The relief position was filled on January 6, 1953, by using D. F. Caffey, a furloughed M. of E. Electrician Helper holding no Group 2 seniority at the time he was used. Claimant contends that he should have been used on his rest days and makes claim for reparations as set forth in the claim.

The Saturdays and Sundays for which claim is made were a part of a regular relief assignment and are not unassigned days as that term is used in the 40-hour agreement. Award 7176. Upon the resignation of Gier, therefore, the Carrier could fill the vacancy pending the bulletining of the position in accordance with Rule 2-A-1 (d). A new employe may be used for this purpose. Rule 3-A-1 (c). This was not a vacancy of thirty days or less to which this senior qualified available employe is entitled to fill on request under Rule 2-A-1 (e). In any event, claimant never requested assignment to the temporary vacancy, although he appears to have requested to work his rest days, Saturdays and Sundays. Under the rules, he is required to request assignment to the position, not a part thereof. We are

of the opinion, therefore, that Caffey was properly assigned to work the relief position formerly assigned to Gier when it became vacant on January 7, 1953. Caffey had no Group 2 seniority and could attain none until he met the conditions set forth in Rule 3-A-1 (c).

Carrier was required by Rule 2-A-1 (a) to bulletin the vacant relief position on Wednesday, January 7, 1953. It did not purport to bulletin the position until Monday, January 12, 1953. It was required by the same rule to post the bulletin for a period of five days in the seniority district in places accessible to employes affected. While there is conflict in the evidence, we conclude that this was not done. The rule further requires that the bulletin show (1) position, (2) location, (3) primary duties, (4) tour of duty, (5) start of week, (6) days of rest, (7) rate of pay, (8) symbol number when assigned to the position, and (9) whether the position is permanent or temporary. An examination of the bulletin shows that requirements numbered (1), (4), and (5) were not complied with. The bulletin did not meet the requirements of the rule. Copies of the bulletin and notice of the award do not appear to have been furnished the Division chairman as required. Employes, including those furloughed, had no reaasonable opportunity to file their bids. Furloughed employes, as required by Rule 2-A-1 (c), had no reasonable opportunity to keep themselves informed as to positions under advertisement. Nor does it appear that the senior qualified furloughed employe in the seniority district was notified in writing of such position and the Division chairman sent a copy as required by Rule 3-C-3 (a).

The record shows that there were furloughed qualified employes in the seniority district, the senior of which group desiring the position was entitled to the bulletined position. The agreement was violated in failing to properly bulletin the relief position. If the position had been properly bulletined, we must assume that an employe other than Caffey would have bid it in on January 14, 1953. Caffey was properly filling the position until the latter date. Consequently, the claim is invalid as to January 10 and 11, 1953. It will be sustained at the pro rata rate for January 17 and 18, although Claimant Johnson does not appear to have established any personal claim to the work. We invoke the rule that there was a violation which the Carrier is required to pay for but once, and that it is immaterial to the Carrier that another had a prior right to the performance of the work.

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.

AWARD

Claim sustained for January 17 and 18, 1953.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April, 1956.