

Award No. 10350

Docket No. MW-9331

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it blanked the position of Crossing Flagman at Virginia Street, Sioux City, Iowa on Thanksgiving Day, November 24, 1955 and thereby reduced the hours of that position, for that particular work week, below the guarantee provisions of Rule 24(f);

(2) Crossing Flagman John B. Hansen now be paid for the actual monetary loss suffered, account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Crossing protection at Virginia Street and at Steuben Street at Sioux City, Iowa, is afforded by employees protecting and/or filling what the Carrier identifies as "seven day type crossing flagmen positions at Sioux City."

Three positions have been established to provide the seven day per week protection necessary at these crossings. One of such positions is assigned to Steuben Street and has assigned rest days of Mondays and Tuesdays, and is assigned to work five (5) days per week, Wednesdays through Sundays, including any designated holiday which occurs during such work week.

The second of such positions is assigned to Virginia Street and is regularly filled and protected by Crossing Watchman C. A. Gries; said position being assigned to work five days per week, Mondays through Fridays, including any designated holiday which may occur during such work week. Rest days of this position are Saturdays and Sundays.

Both of the aforesaid positions and the work weeks assigned thereto were established in conformance with the provisions of Rule 24(f).

In order to provide regular relief on the rest days of the two aforementioned positions, a tag-end relief position was established in conformance with the provisions of Rule 2(e) as revised effective December 1, 1955; said revised

tion did not become a regularly assigned employee on such occasions consequently Rule 24(f) of the effective Schedule Agreement was not applicable to him.

In conclusion the Carrier reiterates that by the claim which the Employees have filed in this case, what the Employees are contending and endeavoring to establish by an award of this Division is either that Rule 24(f) of the effective Schedule Agreement and Article II of the August 21, 1954 Agreement is applicable to unassigned extra employees or that claimant, extra unassigned extra crossing watchman J. B. Hansen, by reason of temporarily filling a regular position during the vacation absence of the regularly assigned occupant of that position became regularly assigned thereto during such absence of the regularly assigned incumbent sufficient to come under the guarantee provisions of Schedule Rule 24(f) of the effective Schedule Agreement and also come under the Holiday provisions of Article II of the August 21, 1954 Agreement.

The claim is entirely without merit and should be denied. All data contained herein has been made known to the Employees.

(Exhibits not reproduced).

OPINION OF BOARD: It is the contention of the Organization that the Carrier violated Rules 24(f) of the Agreement existing between these parties when it blanked the position of Crossing Flagman at Virginia Street in Sioux City, Iowa, on Thanksgiving Day, November 24, 1955, and in so doing reduced the hours of that position for that particular work week, below the guarantee provisions of Rule 24(f).

The Carrier contends that the guarantee provisions of Rule 24(f) apply to the employee assigned to the position rather than the position.

The Carrier further contends that this claim does not involve a regularly assigned occupant of the position of Flagman for the reason the Claimant was an extra unassigned employee.

It seems to be admitted by both the Organization and the Carrier that there were only four days of Crossing Flagman relief work at Sioux City each week which is the work normally done by claimant.

We cannot feel that the status of the employee as admitted in the record was anything but an extra employee.

We cannot hold that the guarantee provisions of Rule 24 are applicable to an extra man, and in so holding, the claim of the Organization fails.

Just because Flagman Hansen, in the capacity of an extra employee, filled the position of a regularly assigned occupant who was on vacation does not change his status in the least. See Awards 7721 and 8319.

We do not see where Award 5634, as cited by the Organization, is in point since a careful reading indicates this Award deals with a **regular assigned occupant of a regular assigned position**. That is not the case here.

It is, therefore, the opinion of this Board that the guarantee provisions of Rule 24(f) were not violated in the instant case. Having so held, we must deny the claim.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1962.