Award No. 10758

Docket No. CL-10228

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Raymond E. McGrath, 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, as well as Extra List Agreement No. 7, and the National Vacation Agreement of December 17, 1941, as amended, at the Ticket Sales and Service Bureau, 30th Street Station, Philadelphia, Pa., by blanking Clerical Positions Symbols F-1734, on Monday, May 14, 1956, and F-1605, on Thursday, May 17, 1956.

(b) Extra Clerk R. L. Lafferty should be allowed eight hours pay for Monday, May 14, 1956.

(c) Extra Clerk B. J. Dougherty should be allowed eight hours pay for Thursday, May 17, 1956. (Dockets 106 — 107)

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 Claimants in this case held positions 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, 1952, except 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.

The Claimants in these cases, R. L. Lafferty and B. J. Dougherty, hold positions of Extra Clerks, Ticket Sales and Service Bureau, 30th Street Station, Philadelphia, Pa., Philadelphia Region. They each have seniority dates on the seniority roster of the Philadelphia Region in Group 1.

Rule 5-C-1, of the Clerks' Rules Agreement, provides that where extra employes are used, extra boards will be established by agreement between the

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioners claim that the Carriers violated the following Agreements:

1. The Rules Agreement effective between the parties May 1, 1942.

2. Extra List Agreement No. 7 effective July 16, 1953.

3. The National Vacation Agreement of December 17, 1941, by blanking positions No. F-1734 on Monday, May 14, 1956 and No. F-1605 on Thursday, May 17, 1956; and that Extra Clerk R. L. Lafferty should be allowed compensation for eight hours work for May 14, 1956, and Extra Clerk B. J. Dougherty should be allowed compensation for eight hours work for May 17, 1956.

The position of the Employes is that both positions should have been filled on the dates on which they were blanked and the failure of the Carrier to do so constitutes a violation of the above named Agreements; and that if the Carrier elects to fill part of a vacation vacancy it is mandatory that the entire vacation period be filled.

The position of the Carrier is that position of a vacationing Employe need be filled only if the requirements of the service make it necessary; that the determination of necessity is the right of the Carrier; and that the filling of an assignment on a day to day basis of a position of an Employe, absent on account of vacation is not a violation of any Agreement.

Rule 5-C-1 of the Clerks Rules Agreement provides that where extra Employes are used, extra boards will be established by Agreement between the Management and the Division Chairman. This rule was complied with by both parties when Extra List Agreement No. 7 dated July 8, 1953 and effective July 16, 1953 was consumated. This Agreement provided how the initial number of Employes to be assigned to the extra board, at the Ticket Sales and Service Bureau would be determined and the manner in which they should be worked. Two of the pertinent sections of this Agreement No. 7 read as follows:

"8. Vacancies of less than thirty (30) days shall be considered "hold-downs". Term "hold-down" means a temporary vacancy of two (2) days or more, but less than thirty (30) days due to regular incumbent being off their assignment for any reason, viz: Vacancies pending advertisement and award; sickness; off with permission; vacations when such positions are to be filled and extra assignments. An employe who is in line for an assignment and such assignment is a "hold-down", such employe shall be assigned to same.

"9. Where an employe has been assigned to a "hold-down", as defined in Item 8, such employe shall only remain on such "hold-down" until the first rest day of the "hold-down" position, or has worked forty (40) straight time hours or is off duty for any reason. Such vacancy shall then become a new vacancy and same shall be assigned to the extra employe who stands for same in his turn."

Article 6 of the Vacation Agreement reads as follows:

"6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary

jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

Article 10(b) reads as follows:

"(6) Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

One of the first questions which should be determined in this case is whether, under the terms of the above quoted Agreements and the facts in this case, it is mandatory that the Carrier fill the vacancies under discussion. It would appear that the language of the Agreement can only be interpreted to mean that vacation absences do not always have to be filled by vacation relief Employes. The phrase "when such positions are to be filled" would indicate that there are instances when the positions will not have to be filled.

Rule 12(b) of the Vacation Agreement states:

"(b) As employes exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty **will not constitute "vacancies" in their positions under any agreement. When the position of a vacationing employe is to be filled** and regular relief employe is not utilized, effort will be made to observe the principle of seniority." (Emphasis ours.)

The use of the word "will" in Article 6 clearly indicates that it was not the intention of the parties to make it mandatory that vacation relief workers be provided for all vacationing Employes.

In Award 6574 (Wyckoff) this Board interpreted a rule which provided that temporary vacancies would be filled "when necessary". The claim in that case presented the question whether the Carrier was obligated to fill a temporary vacancy in a General Agent position during a vacation. This Award 6574 reads in part as follows:

"Third. By providing that such vacancies will be filled "when necessary," the Special Letter Agreement confers a discretion upon the Carrier to determine whether any such necessity exists at the given time and the given station or office. This discretion is not absolute; but we should not disturb its exercise by the Carrier except upon a showing of abuse.

"The essential question therefore is whether the failure to fill the vacancy was arbitrary, capricious or unreasonable."

The above quoted award follows other awards of the Board and is entirely consistent with the Decision of Referee Wayne L. Morse with Inter-

pretations of the Vacation Agreement which has been quoted by both parties in this case. At Page 29 of the record this decision is quoted in part as follows:

> "The Carriers will provide vacation relief workers', does not lay down any universal requirement that the position of every employe must be filled while he is on vacation."

This Board therefore holds that the filling of the vacancies involved in this case is not mandatory and the failure to fill these vacancies was not ipso facto a violation of the Agreements under discussion.

The next question which should be decided in this case is whether it is necessary for a Carrier to fill a position for all of the vacation vacancy if it elects to fill the vacation vacancy for part of the vacation period. The answer to this question is given to us in the negative subject to certain conditions in the same much quoted Referee Morse Decision and Interpretations of the Vacation Agreement. The Morse decision at pages 74 and 75 of the Vacation Agreement reads in part as follows:

> "(5) The carriers submitted the following illustrations in connection with the dispute over the first question in Article 6 and asked for a ruling on them:
>
> > '(a) The position of an employe entitled to twelve days vacation is filled during his absence for nine days and is blanked for three days because employment is unnecessary except for nine days. The carriers contend that it is only necessary to fill his position during the days when relief is required.'
>
> "It is the ruling of the referee that the contention of the carriers as to this illustration is sound, subject to the understanding that there was no need for the performance of any work in connection with this job during the three days that a relief worker was not employed. Or to put it another way: the carrier would not be obligated under the illustration to fill the job during the three days unless its failure to do so would place a burden, within the meaning of the second sentence of Article 6 upon those employes remaining on the job or upon the regular employe after his return from vacation."

Following the rule as laid down in the Morse Decision we must now analyze our record to see whether the Carriers blanking of the positions has placed a burden, within the meaning of Article 6, upon those Employes remaining on the job or upon the regular Employe after his return from vacation. Morse says it "becomes a question of fact in each instance."

The record shows that the duties assigned to all of the Employes involved in this dispute consist of giving information to the general public in connection with passenger travel and the arranging of reservations by means of the telephone. The advertised duties which are applicable to all such Employes:

> "Duties: Qualified Information-Reservation Clerk. Knowledge of all routes of sleeping and parlor cars. Familiar with geography of all railroads and able to read all tariffs rapidly."

When one of the members of the group was absent every other member of the group continued to perform the same work which he or she regularly per-

formed. No overtime for those remaining was involved. They worked their regular shift. There is no showing in the record that any one or more of them were burdened within the language of the Agreements.

Article 10(b) above quoted does not apply to the facts in this case. The volume of work which each clerk does depends on the number of requests for service of various kinds handled by this group of clerks. Naturally therefore the volume varies from day to day. It is not possible to supply the so-called 25% rule here. The work is not divisible so that it can be ascertained whose duties are being performed. The record does not disclose that the clerks on duty while the vacationer's position was blanked were burdened.

There is also no showing that the vacationing Employe was burdened or had any duties added to his or her regular duties on his return from his vacation.

For the reasons stated the ruling of this Board is that the Agreements have not been violated and the claim is denied.

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 Railroad 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1962.