

Award No. 11920
Docket No. CL-11723

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

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

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

1. Carrier violated the Clerks' Agreement when it failed to call the employe assigned to Yard Clerk Position No. 15 at Savannah, Illinois, on February 18, 1959 and in lieu thereof first called the regular occupant of the position who was on vacation and then an employe in the district not associated with the position.

2. Carrier shall now be required to compensate Employee R. Demeester for eight (8) hours at the overtime rate of Yard Clerk Position No. 15 for Wednesday, February 18, 1959.

EMPLOYEES' STATEMENT OF FACTS: The following positions were in effect in Savannah, Illinois on February 18, 1959:

Title	Pos. No.	Occupant	Hrs. of Service	Rest Days	Rate	Relieved By
Yd Clerk	15	K. Arneson	11:45 P. M. - 7:45 A. M.	Wed & Thur	\$18.13	Rel. #2
Relief	2	T. Smith		Sun & Mon		

Employee K. Arneson was assigned two weeks vacation during the period February 6th through February 17th, 1959. Yard Clerk Position No. 15 was not included in a regular vacation relief assignment during the two week vacation period of Employee Arneson.

Furloughed Employee R. Demeester requested the temporary vacancy on Yard Clerk Position No. 15 during the two week vacation period of Employee Arneson and was assigned thereto on February 6, 1959, occupying the position for the entire two week period.

On Wednesday, February 18, 1959, the regularly assigned relief employe on Yard Clerk Position No. 15 was absent account of illness. Employee K. Arne-

Section 4 of Memorandum of Agreement No. 9 to said overtime work, was Employee K. P. Arneson and, therefore, Employee Arneson was, in accordance with the provisions of Section 4 of Memorandum of Agreement No. 9, entitled to be called for the overtime work in the first instance. However, inasmuch as Employee Arneson was absent on vacation he was unavailable for the overtime work on Yard Clerk Position No. 15 on Wednesday, February 18, 1959. Therefore, with both the regular and relief occupants of Yard Clerk Position No. 15 unavailable on Wednesday, February 18, 1959 it was necessary to go to the "sub-division" to obtain an employee to perform the overtime work involved and in this regard Employee J. Everhart was the senior available employee with sufficient fitness and ability in the "sub-division", therefore, in accordance with Section 4 of Memorandum of Agreement No. 9, Employee Everhart was called for the overtime work on Yard Clerk Position No. 15 commencing at 11:45 P.M. on Wednesday, February 18, 1959, and he responded.

The Carrier submits that Yard Clerk Position No. 15 was filled strictly in accordance with Section 4 of Memorandum of Agreement No. 9 on Wednesday, February 18, 1959, in view of which the claim which the employees have here presented in behalf of R. T. Demeester is entirely without merit.

There is no basis for this claim. There has been no violation of the rules. The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employees and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose from the following situation: Employee K. Arneson of Yard Clerk Position No. 15 went on a two week vacation comprised of 10 work days and 4 rest days during the period of February 6, 1959 through February 19, 1959. In his absence his position was filled by furloughed employee, R. Demeester, the Claimant. Clerk T. Smith held the regular relief assignment for the rest days which were Wednesday and Thursday since the five-day work week began on Friday. On Wednesday, February 18, Clerk T. Smith did not report to his regular relief assignment. Carrier called upon Mr. Arneson to fill the rest day assignment, but he declined it because he was on vacation. Then Carrier called upon senior qualified employee, J. Everhart, who filled the vacancy.

Employee Demeester makes claim that he had the same rights as regularly assigned employee Arneson whom he replaced and that since Mr. Arneson would have been entitled to be the first to be called for work had he not been on vacation, he, too, should have been given the first call for work on Wednesday, February 18, the rest day. He, therefore, asks for compensation for that day.

Carrier contends that it had no obligation to call Mr. Demeester because his assignment was concluded when he completed the last work day. It maintains that Claimant was not a regularly or temporarily assigned employee because the rest day followed his last completed work day. Under such circumstances it asserts it was within its rights to call the senior qualified employee.

The issue in this dispute is whether or not on Wednesday, February 18, Mr. Demeester can be regarded as the employee regularly assigned to Yard Clerk Position No. 15.

Both Carrier and Organization agree that if Mr. Arneson was working on his assignment but off because of his rest day, and if on that day the regular relief employee became ill, under these conditions, Mr. Arneson would have been entitled to be called first for that rest day. They also agree that when Mr. Arneson was on vacation, he was not eligible to work on the rest day, February 18, because he was not due to return from his vacation until February 20th. Carrier admits its error in inadvertently calling Mr. Arneson, who declined the work.

Pertinent to this dispute are Section 4 of Memorandum of Agreement No. 9 and a letter of understanding of April 17, 1957 which establishes the procedure to be followed in the application of Rule 32(f). These read as follows:

"4. WHEN AN EMPLOYEE IS CALLED FOR OVERTIME WORK ON OTHER THAN A HOLIDAY AND THE WORK CAN BE IDENTIFIED WITH A SPECIFIC POSITION' —PREPONDERANTLY THE DUTIES OF A SPECIFIC POSITION.

When an employee is called for overtime work on other than a holiday and the work is preponderantly the duties of a specific position, the employee regularly assigned to that position will be called. If that employee is unavailable, the senior available employee with sufficient fitness and ability in the 'subdivision' will be called.

NOTE: In applying the provisions of this section, 'the employee regularly assigned to that position' means the employee assigned to fill that position on that particular day will be called. If such employee is the regular occupant and he is unavailable, then the relief occupant of that position, if any, will be called or vice versa. If the regular and relief occupants are unavailable, then the senior available employee with sufficient fitness and ability in the 'subdivision' will be called."

The letter of understanding of April 11, 1957 reads in part:

"You may accept that I am agreeable that during the employee's scheduled vacation period, that is, from the beginning of the first work day of his vacation to the commencement of the first work day following his vacation, an employee will not be considered available for work unless there is no other qualified employee available for such work."

"32(f). In working overtime before or after assigned hours or on one of the seven (7) holidays specified in Rule 35(b), (if such holiday falls within the employee's work week) the employee regularly assigned to position on which overtime is required will be utilized. It is understood that the word 'regularly' as contained in this Rule 32(f) means that the employee who occupies a position either temporarily or permanently at the time overtime work occurs will be used for the overtime work."

Under these rules we find that the employee who occupies the position, either temporarily or permanently when overtime work occurs, is the regular

employee and is to be the first one to be called upon for work. Mr. Demeester, the Claimant, was that regular employee at the time and should have been called first. In assuming the position of Mr. Arneson, Claimant not only received the position but also took over the same conditions under which Mr. Arneson worked. Thus his work covered the same vacation period to which Mr. Arneson was entitled. This period included 14 days comprising the 10 work days plus the 4 rest days. Moreover, since Mr. Arneson's vacation assignment did not terminate until February 19th, he was the regular employee who, according to the rules mentioned, was entitled to be called first on February 18th.

We have carefully examined Award No. 11446 cited by Carrier but find it is not directly in point because the factual situation from which it derives is dissimilar.

We hold that Carrier violated the Agreement of the parties.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.