Award No. 12459
Docket No. CL-11536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(A) Carrier violated the Clerks' Agreement at Memphis, Tennessee, when on September 10, 1958, it refused to allow Clerk J. P. Jones the right to exercise his displacement rights to a position occupied by a junior employe, and

(B) Clerk J. P. Jones be compensated for wage losses suffered representing a day's pay at penalty rate for September 12, 1958, and a day's pay at pro rata rate for September 13, 1958. (Pro rata rate of position — $18.46 per day)

EMPLOYES' STATEMENT OF FACTS: There is in effect between the Carrier and this Brotherhood, an Agreement, effective June 23, 1922, as subsequently revised February 1, 1954, covering working conditions of the employes, which Agreement has been filed with the National Railroad Adjustment Board, as provided for in the Railway Labor Act, as amended, and this Agreement will be considered a part of this submission. Various rules thereof may be referred to herein from time to time without quoting them in full.

Prior to September 8, 1958, Claimant J. P. Jones was the regular occupant of Position No. 336, Thursday through Monday, 3:00 P. M. to 11:00 P. M., rate of pay $18.46 per day, rest days Tuesday and Wednesday.

On September 4, 1958, Carrier's Superintendent F. J. Duggan issued a change in rest days bulletin, reading as follows:

"Effective 12:01 A. M., Monday, September 8, 1958, the assigned rest days of the following positions will be changed as follows:

Position No. 335 — Now Monday & Tuesday — to — Tuesday and Wednesday.

Position No. 336 — Now Tuesday & Wednesday — to — Saturday and Sunday.

Although the Claimant involved in that dispute was an extra man, the principle involved in Award No. 10 is equally applicable here. Claimant Jones had no right to claim a job that would pay him penalty rates of payment and Carrier's position in avoiding the payment of penalty rates by using the regular incumbent who was available at the pro rata rate was entirely proper. There was no rule under the agreement that required the Carrier to permit the Claimant to transfer to a new assignment on September 12, 1958.

CONCLUSION

The Adjustment Board does not have the authority to change a rule or rules in an agreement or to supply one that does not now exist. This principle was amply illustrated in Award 6365, Third Division, from which the following is quoted:

> "It is the duty of this Board to interpret the rules of the Agreements as they are made. We are not authorized to read into a rule, that which is not contained, or by an award add or detract a meaning to the Agreement which was clearly not the intention of the parties. Many awards have been made by this Board, on this subject, and we refer to only a few as affirming our position. See Awards 4439, 5864, 5971, 5977."

Carrier maintains that it was under no obligation to comply with the request of Claimant Jones to transfer him to his new assignment on September 12, 1958, as he had already performed service for the Carrier within the preceding sixteen hours and was not entitled to be used until he was available for service at the pro rata rate. In addition, Carrier has shown that the Employes' interpretation of paragraph (b) of Rule 35 is erroneous in that there is no provision that limits the time within which an employe must be transferred to a new assignment. The record will show that the transfer of Claimant Jones to the position he elected to displace on took place on September 14, 1959, which was within a reasonable period of time. The claim before the Board is lacking in merit and is not supported by any rule in the effective agreement and should accordingly be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the regularly assigned incumbent of Position No. 336. By bulletin notice dated September 4, 1958, the rest days of the position were changed from Tuesday and Wednesday to Saturday and Sunday.

It is admitted that Claimant, on September 10, 1958, gave Carrier notice that effective at 7:00 A. M. Friday, September 12, 1958, he wanted to displace a junior employe on Position No. 335. Carrier denied the request that the displacement be effective on September 12. It, unilaterally, set the effective date as September 14. Carrier's given reason for the delay was that if the request, as made, was granted, it would have been required to pay Claimant overtime rate for September 12. It points to the following language from Award No. 4969 as supporting a right to avoid payment of overtime rate:

> ". . . An employe has no right to perform overtime work as such except where the Agreement expressly provides. When necessary work can be performed only on overtime hours, the senior available employe then has a valid claim to it by virtue of his seniority. But where the carrier can get the work done at straight time rates

without violating a provision of the Agreement, it is within its province to do so. It is the function of good management to arrange the work, within the limitations of the collective agreement in the interests of efficiency and economy."

Petitioner claims that Carrier's denial of Claimant's request, as made, violated Rule 35(b) of the Agreement which reads:

"(b) When the established starting time of a regular position is changed more than two (2) hours for more than five (5) consecutive days or a change is made in rest days, the employes affected may, within ten (10) days thereafter, upon thirty-six (36) hours' advance notice, exercise their seniority rights to any position held by a junior employe. Other employes affected may exercise their seniority in the same manner."

It being admitted that Claimant, within the time specified in Rule 35(b), gave 36 hours' notice of displacing prior to September 12, the only issue is whether Claimant had an absolute right to displace the junior employe on that date.

Rule 35(b) is unqualified and unequivocal. We find that Claimant's right to displace the junior employe on September 12, having satisfied the prerequisites, was absolute. Carrier's refusal to permit Claimant to exercise this vested right violated the Agreement. As Award No. 4969 holds, Carrier's province to "get the work done at straight time rates" is limited to those circumstances where it can do so "without violating a provision of the Agreement". We will sustain the claim.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.