Award No. 14252
Docket No. CL-15210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5662) that:

(1) Carrier violated the Clerks' Agreement when it failed to call Mr. Robert Hart and blanked Yard Clerk Position No. 6 at Danville (Lyons Yard) Illinois, on Sunday, August 19, 1962.

(2) The Carrier shall now compensate Mr. Robert Hart, Yard Clerk, for eight (8) hours' pay on August 19, 1962, at rate of pay $20.128.

EMPLOYES' STATEMENT OF FACTS: Mr. Robert Hart is regularly assigned to Yard Clerk Position No. 4 at Danville (Lyons Yard) Illinois, with work week as follows: Sunday through Thursday, inclusive, with Friday and Saturday as rest days. Rate of pay $21.324 per day. Hours of service, 7:00 A. M. to 3:00 P. M.

Mr. Arola McMains is regularly assigned to Yard Clerk Position No. 6. Work week, Wednesday through Sunday, inclusive, with Monday and Tuesday as rest days. Rate of pay, $20.128 per day. Hours of service, 3:00 P. M. to 11:00 P. M.

On Sunday, August 19, 1962, a day Mr. Arola McMains, the regular incumbent of Yard Clerk Position No. 6 was assigned to work, he was unable for some reason or other to report for duty on that date. The reason for which Mr. McMains was not able to protect his assignment on a day he is assigned to do so is irrelevant to the case and will, therefore, not be dealt with here.

When on Sunday, August 19, 1962, Mr. Arola McMains was unable to report for duty, the vacancy should have been filled in accordance with the provisions of Memorandum of Understanding dated March 21, 1955. Instead, the Carrier elected to blank the rate of pay and assign the work thereof to the third trick yard clerks on August 19, 1962, and the remaining work

From August 8 to August 26, 1962, inclusive, Mr. McMains was absent account illness, his position being filled, except for Sundays — August 19 and 26 — by extra or unassigned clerks. An assessment of the work necessary on these two Sundays indicated it could readily be handled without being burdensome to other clerks, and the position was blanked. The small amount of work which would have been performed on this position on the two days was absorbed by other clerks without undue hardship or necessity for overtime.

The Organization contends that Carrier violated the Agreement because Robert Hart, the senior qualified available employe at the point of vacancy, should have been called to work this position on these two days. The Organization has progressed the claim for August 19, with the claim of August 26 to be governed by the award.

OPINION OF BOARD: The instant claim arose out of the following facts. The regularly assigned clerical employe, A. E. McMains, was absent account illness from August 8 to 26, 1962, inclusive. He held Position No. 6, hours 3:00 P. M. to 11:00 P. M., relief days Monday and Tuesday. During his period of illness, the position was filled by extra or unassigned clerks, except for two Sundays, August 19 and 26.

Claimant Hart, the senior qualified available employe, is the incumbent on Position No. 4, hours of assignment from 7:00 A. M. to 3:00 P. M., relief days Friday and Saturday. The Organization filed this claim on behalf of Hart, contending that the agreement was violated when the Carrier failed to call the Claimant to work Position No. 6 on the two Sundays in question.

The Carrier declined the claim on the ground that the said position was blanked on those Sundays; therefore, the Agreement was not violated. It had determined that the work scheduled to be performed on those two Sundays could readily be handled by the other clerks, without undue hardship or overtime.

Basic to the instant dispute is a Memorandum of Understanding executed on March 21, 1955. The Organization urges that this Memorandum superseded other general provisions in the contract because of its mandatory language. Thus, the thrust of the Organization's contention is to negate the right of the Carrier to blank a position, premised upon the 1955 Memorandum of Understanding, the pertinent portion of which is hereinafter quoted:

> "In the event a regularly assigned clerical employe is unable, for some reason or other, to report for duty on one of his regularly assigned working days, the service on that day shall be protected as follows with preference in the order shown:
>
> (a) by a qualified available extra or furloughed employe who has not had forty (40) hours of work in his work week;
>
> (b) by the senior qualified available employe on the seniority roster at the point of the vacancy desiring the work. (At large terminals employes desiring such work will be required to file their name, address and telephone number with the Agent indicating the location or locations at which they will accept short vacancy work."

In the absence of a specific prohibition we have oft reiterated through numerous awards the Carrier's right to blank a position. We need only cite a few of the more recent awards on this issue; see Award Nos. 12686, 12358, 12099, etc. The question, therefore, is whether the aforementioned Memorandum altered the above right and substituted a rule prohibiting the Carrier from blanking a position. A careful analysis of the 1955 Memorandum does not reveal such intent.

The language as contained in the Memorandum becomes applicable when a regularly assigned clerical employe fails to report for duty on one of his regularly assigned working days, then the service on that day shall be protected in the following order — thereafter, is outlined the procedure the Carrier shall use in selecting a qualified employe to fill such position. The words printed in dark type are phrased in the singular, in any event, connoting a situation different from the one herein. This is further supported by the use of the words, "for some reason or other" — rather than a protracted illness, which existed here.

Furthermore, it appears to us that the mandatory provision urged by the Organization was intended to apply to the method used in selecting the replacement — rather than prohibiting the Carrier from exercising its right to blank a position. If such was the intent of the parties, they could readily have inserted language to that effect. In the absence of a specific rule depriving the Carrier from exercising its basic inherent right, we may not substitute our judgment for that of the parties. In effect, we would be rewriting the contract, which definitely is not our function. We can only interpret those provisions which the parties have previously agreed upon and included in their contract.

Inasmuch as we have concluded that the Carrier was not obligated to work the position, therefore, it is required to pay McMains his sick allowance under Rule 50, which payment has been held in abeyance pending the disposition of the instant 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 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 22nd day of March 1966.

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