Award No. 14599
Docket No. CL-13003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5055) that Carrier violated the existing Clerks' Agreement at Savannah, Georgia, yard office.

When, on August 2, 1960, and subsequent dates it arbitrarily removed employes from their regularly assigned positions and required them to work positions of other employes without compensating them in accordance with and as stipulated in the Agreement.

(a) That, Clerk W. I. Conoway be paid the difference between the pro rata and punitive rates for October 11-12 and December 13-14, 1960.

(b) That Clerk W. L. Aycock be paid the difference between the pro rata and punitive rates for August 2 and 3, 1960.

(c) That, Clerk E. H. Futch be paid the difference between the pro rata and punitive rates for August 2, 4, 5, 14, 15 and 27, 1960.

(d) That, Clerk W. C. Yarborough be paid the difference between the pro rata and punitive rates for October 10, 1960.

EMPLOYES' STATEMENT OF FACTS:

AS TO CLAIMANT W. I. CONOWAY

Conoway is a regularly assigned Relief Clerk working 7:59 A.M. to 3:59 P.M. — Thursday through Monday with Tuesday and Wednesday rest days. He relieves the Record Clerk Thursday and Friday, the Chief Clerk on Saturday and the Bill Clerk on Sunday and Monday.

On Monday, October 10, 1960, Claimant was required to go on the Chief Clerk's position and work through Friday, October 14, 1960, as the regular incumbent was on vacation. This caused Claimant to work nine consecutive

thereof beginning that date. This latter position was assigned Sunday through Thursday, with off days Friday and Saturday. He worked the position Sunday, August 14 through Thursday, August 25, the regularly assigned employe returning from vacation Saturday, August 27. Futch worked his regular position Saturday, August 27, 3:59 P. M. to 11:59 P. M. and submitted claim for punitive rate of 7:59 A. M. to 3:59 P. M. crew dispatcher's position for working thereon Sunday, August 14, Monday, August 15 and working his own 3:59 P. M. to 11:59 P. M. crew dispatcher's position on Saturday, August 27, the applicable rates of the two positions being the same. Claim was handled on the property including General Chairman's appeal to Director of Personnel dated December 13 (Exhibit X and Director of Personnel's letter of declination to General Chairman dated December 21 (Exhibit XI).

"(d) That, Clerk W. C. Yarborough be paid the difference between the pro rata and punitive rates for October 10, 1960."

Clerk Yarborough on and before October 9, 1960 was regularly assigned clerk in the office of Terminal Trainmaster, Savannah Yard, Georgia, 3:59 P. M. to 11:59 P. M. He worked this position on October 9 and because Clerk Conoway was rearranged on chief clerk's position in the immediate office account of vacation of the latter beginning Monday, October 10, Clerk Yarborough was rearranged on Conoway's position Monday, October 10, and worked it that date, 7:59 A. M. to 3:59 P. M., submitting claim for punitive rate of Conoway's position October 10. Claim was handled on the property including General Chairman's letter of appeal to Director of Personnel dated January 4, 1961 (Exhibit XII) and Director of Personnel's letter of declination dated February 21, 1961 (Exhibit XIII).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants are regularly assigned employes of Carrier, who were required to work positions of other employes on vacation in 1960. Claimants were temporarily assigned to positions of employes on vacation and required to work during scheduled rest days of their own regular assignments at the pro rata rates of the respective positions they temporarily filled. One Claimant was also required to work two shifts during a twenty-four hour period in order to relieve an employe on vacation and was compensated for working the second shift at the pro rata rate.

The record discloses that Claimants did not request or volunteer for the work assignments and were required to work positions other than their own by Carrier. Petitioner contends that Claimants are entitled to be paid the difference between the pro rata and punitive rates of the positions temporarily assigned to them by Carrier for work performed in such positions during the regularly assigned rest days of their permanent positions. Petitioner further contends that the Claimant who was required to work two shifts during a twenty-four hour period should have received the punitive rate instead of the pro rata rate for the positions he filled during the second shift.

The instant claims are specifically based upon the following provisions contained in the controlling Agreement:

"RULE 44. (OVERTIME)

(a) Except as otherwise provided, when an employe is directed for any reason to work on a shift in addition to his own in any

twenty-four (24) hour period such work will be considered overtime and paid at the overtime rate; if the rates of pay on the involved positions are not the same, overtime will be computed on the basis of the higher rate."

"RULE 45.

(NOTIFIED OR CALLED)

(c) Service rendered by an employe on his assigned rest day, or days, relieving an employe assigned to such day shall be paid at the rate of the position occupied or his regular rate, whichever is higher, with a minimum of eight (8) hours at the rate of time and one-half.'"

Other pertinent provisions of the Agreement, including Rule 24, have been recited by the parties and need not be repeated here.

The thrust of Carrier's defense is that Rule 24 of the controlling Agreement as well as previous practices on the property permit Carrier to rearrange the assignments of regularly assigned employes for the purpose of relieving other employes during vacation periods even though the affected employes had made no written application for other positions when such rearrangement occurs. Carrier contends that such employes assume all of the conditions of the positions to which assigned, including the rest days, subject to the return of the regular incumbents and that the employes so placed, do not carry with them rest days of their regularly assigned positions while serving in the positions rearranged by Carrier.

Petitioner avers that the provisions of Rule 24 are not applicable to regularly assigned employes who are placed in other positions occasioned by rearrangement unless they have requested such work in writing. Here, Claimants were instructed to work the positions set forth in the claim by Carrier which they had not requested and one Claimant also was required to work a position other than his own within the same twenty-four hour period as his regular assignment.

A careful review of the pertinent provisions of the Agreement, particularly Rule 24 (a) (b) (c) and (f) thereof, supports the position of Petitioner that Carrier does not have the right to require regularly assigned employes to work on their assigned rest days at the pro rata rate in positions other than their own to which they have been assigned involuntarily through rearrangement by Carrier as temporary relief for absent incumbents on vacation. Likewise, Carrier cannot require an employe to work on a shift in addition to his own in any twenty-four hour period at the pro rata rate under the guise of compliance with the provisions of Rule 24.

The precedents cited by Carrier in support of its position do not preclude Petitioner's right to insist herein upon compliance with the clearly unambiguous provisions of the controlling Agreement between the parties. The provisions of an Agreement, when clear and unambiguous, shall prevail over conflicting practices.

If Claimants had requested in writing the temporary positions to which assigned through rearrangement by Carrier, Rule 24 would be controlling in this dispute. However, Claimants did not work said positions through preference

and therefore, cannot be denied the rights expressly and plainly granted in Rules 44 (g) and 45 (c). In view of the foregoing, we shall sustain the claims. (Awards 6382, 6732, 8395 and 12819.)

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 has been violated.

AWARD

Claims are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.