Award No. 14696
Docket No. CL-13509

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5233) that:

1. The Carrier violated the Clerks' Agreement on June 19, 20, 21, 22, 23 and July 17, 18, 19, 20, 21, 24, 25, 27 and 28, 1961, when it required or permitted Mr. S. D. Robinson, Traveling Freight Claim Adjuster, to suspend work on his regularly assigned position in order to work positions of Claim Investigators Nos. 986 and 2459.

2. Mr. Willard D. Moore shall now be paid the Traveling Freight Claim Adjuster rate of $26.89 for each of the days involved.

EMPLOYES' STATEMENT OF FACTS: Mr. S. D. Robinson is regularly assigned to position of Traveling Freight Claim Adjuster in the office of Freight Claim Department. Seniority date of August 1, 1942.

Mr. Willard D. Moore is regularly assigned to position of Claim Investigator in the same office. Seniority date of March 9, 1942.

Mr. Frank Carnathan, Investigator No. 986, was on vacation June 19, 20, 21, 22 and 23, 1961.

Mr. W. C. Lamely, Disposition Claims Investigator No. 2459 was on vacation July 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1961.

On June 19, 20, 21, 22, 23 and July 17, 18, 19, 20, 21, 24, 25, 27 and 28, 1961, Mr. S. D. Robinson suspended work on his own position and worked Claim Investigator positions Nos. 986 and 2459.

On August 15, 1961, claim was filed on behalf of Mr. Willard D. Moore. Employes' Exhibit No. 1.

On September 6, 1961 claim was declined by Mr. Carl Kirk, Freight Claim Agent. Employes' Exhibit No. 2.

Further appeals were made up to and including the highest officer designated to receive such appeals. Employes' Exhibits Nos. 3, 4, 5, 6 and 7.

(Exhibits not reproduced.)

Since Mr. Moore is the claimant in this case, I have refrained from asking him for a statement confirming the fact that he also followed the same procedures of other Adjusters. However, it is believed that sufficient evidence is submitted here to prove what I have said about the actions of all Traveling Freight Claim Adjusters in the past twenty years.

I am allowing Mr. B. W. Smith to have a copy of this letter and all attachments for his information.

/s/ Carl Kirk

cc: Mr. B. W. Smith
St. Louis, Missouri
Your file E-280-320"

We are also attaching hereto the following exhibits, some of which are referred to in the foregoing letter, confirming Mr. Kirk's statement that the occupant of position of Traveling Freight Claim Adjuster has as far back as 1938 been used to relieve on various positions when the occupants were absent on vacation:

Exhibit A-1 — Former Freight Claim Agent Macon's letter to former Traveling Freight Claim Adjuster Maloan dated June 27, 1938.

Exhibit A-2 — Similar letter to Maloan dated June 9, 1939.

Exhibit A-3 — Statement of Clarence Krohn.

Exhibit A-4 — Statement of W. D. Selman.

Exhibit A-5 — Statement of S. D. Robinson.

Exhibit A-6 — Statement of R. F. Ragsdale.

Exhibit A-7 — Statement of ten employes in the Freight Claim Department.

7. The claim was subsequently appealed to the Chief Personnel Officer on October 2, 1961, and declined on November 16, 1961. The claim as now presented to your Board is for 14 dates instead of 15 as claimed in the Division Chairman's letter initially filing the claim — the date of July 26, 1961, having been dropped.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier used a regularly assigned Traveling Freight Claim Adjuster to perform the duties of two vacationing employes classified as Claim Investigators during the periods set forth in the Statement of Claim. Employes charge that the Traveling Freight Claim Adjuster was required to suspend work in his regular position to handle the duties assigned the vacationing Claim Investigators and that this was violative of the controlling Agreement between the parties.

Employes contend that Claimant, a regularly assigned Claim Investigator with more seniority than the employe selected by Carrier to perform the work of other vacationing Claim Investigators, should have been assigned to the resulting "vacancy" in the Traveling Freight Claim Adjuster classification. The thrust of Employes' position is that Carrier elected to fill the vacation vacancies with a regularly assigned employe in another position and is therefore, required to fill the temporary vacancy resulting from rearrangement under Rule 25 (b) of the Rules Agreement which reads as follows:

> "(b) Until an agreement is reached establishing an extra board, all temporary positions and vacancies will be filled by rearrangement of the regular forces in that office, giving senior employes their preference. The senior employe, unassigned on that roster, will be called to fill the vacancy left after the rearrangement of the regular force."

Employes further contend that Carrier also violated certain provisions of the Vacation Agreement of December 17, 1941, as amended. The pertinent provisions are as follows:

> "ARTICLE 6.
>
> The Carriers will provide vacation relief workers but the vacation systems 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, PARAGRAPH (b)
>
> 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."
>
> "ARTICLE 12, PARAGRAPH (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."

Employes suggest that Carrier improperly sought to avoid the hiring of vacation relief workers in violation of Article 6 and Article 10 (b) of the the Vacation Agreement by requiring an employe to absorb the work load of Vacationing employes in addition to his regular assignment during the same period of time.

Carrier's position is that the use of the Traveling Freight Claim Adjuster to work either all or a part of the vacationing employes jobs did not burden him as the nature of his regular work was not too immediately demanding and further that the incumbent of the Traveling Freight Claim Adjuster position had for many years been relieving occupants of such positions while absent on vacation without protest from the Employes.

Carrier contends that the Traveling Freight Claim Adjuster did not suspend all work on his regular position and continued to perform necessary and urgent duties of his regular position. Moreover, Carrier asserts that no overtime was here involved and that no overtime would have been paid had a full-time relief worker been employed.

The basic issue to be determined is whether or not Carrier has violated an obligation, imposed by contract, in connection with the rearrangement of the forces to fill vacancies caused by employes being on vacation. There is in evidence a Rules Agreement bearing revised date of November 1, 1955 and the National Vacation Agreement of December 17, 1941.

A careful review of the record and the Rules Agreement between the parties supports Carrier's position that no provision thereof prevents Carrier from utilizing the services of regular employes for vacation relief even to the extent of moving a regular employe from his job to the vacationer's position for the period of time during which the incumbent is on vacation. However, where a Carrier is using the same employe on two different assignments at the same time as in the instant case, the applicable provisions of the National Vacation Agreement must be adhered to and followed. Under these circumstances, Carrier is only permitted to distribute the work of a vacationing employe among his fellow employes with common seniority under a given rules agreement of a particular class or craft, provided such distribution is not in excess of 25% of the work load of a given vacationing employe unless a larger distribution of the work load is agreed to by representatives of employes. (Award 7330.)

Although Article 10 (b) of the National Vacation Agreement is not specifically applicable to the assignment of the work of a vacationing employe to one other employe where the volume is insufficient to require the designation of an additional employe to fill the place of the vacationing employe, the Award of Referee Morse states that the 25% protection applies. (Vacation Agreement of December 17, 1941 — Award of Referee.) Therefore, as more than the equivalent of 25% of the work load of the vacationing employes was allocated and performed by a single employe, classified as a Traveling Freight Claim Adjuster, without negotiation or agreement with the employe's representative, the provisions of Articles 6 and 10 (b) were violated by Carrier. The question as to whether or not conditions justified a greater distribution of the work is a question of fact and subject to negotiation and agreement between the parties. In the absence of such agreement the 25% limitation was applicable and Carrier's unilateral action is violative of the National Vacation Agreement, as amended. Awards 6733 and 7330.

Part 2 of the Statement of Claim provides that Claimant, Willard D. Moore, "shall now be paid the Traveling Freight Claim Adjuster rate of $26.89 for each of the days involved." Thus, the claim is bottomed upon the premise that Carrier blanked the Traveling Freight Claim Adjuster position while the

regular incumbent filled the positions of vacationing employes and that Carrier is required under Rule 25 (b) of the controlling Rules Agreement between the parties to fill the temporary vacancy caused by the rearrangement.

We cannot accept the premise upon which the claim is based. In the first instance, the weight of the evidence supports Carrier's contention that the regularly assigned Traveling Freight Claim Adjuster performed certain duties of that position during the periods when he also performed the work of two vacationing employes classified as Claim Investigators. Therefore, the position of Traveling Freight Claim Adjuster was not vacant as contended by Employes. Moreover, had the Carrier removed the incumbent from said position for the purpose of temporarily relieving the vacationing employes, the resulting vacancy would have been subject to the provisions of Rule 25 (b) only if and when the Carrier elected to fill such vacancy. Rule 25 sets forth the procedures for filling temporary vacancies but can not be construed as imposing an obligation on the Carrier to fill a vacancy. (Awards 12358 and 10888.)

A considerable part of the submission has dealt with Carrier's violation of the National Vacation Agreement of 1941 but no probative evidence was offered in support of Employe's assertion that Carrier suspended a Traveling Freight Claim Adjuster from his regular duties to absorb overtime in violation of Rule 44 of the controlling Rules Agreement between the parties. To support the claim for such rule violation, Employes must show that a Claimant was deprived of overtime work which would have otherwise accrued to him. There is no evidence here that Claimant would have earned any overtime had the rearrangement by Carrier been conducted in accordance with the Employes claim. In fact, there is no evidence of any overtime payments in this dispute. (Awards 13192 and 13218.)

The claim demanded in part 2 of the Statement of Claim is dependent upon a finding of Carrier's violation of the Rules Agreement between the parties to the detriment of the Claimant. The necessary elements for such a finding are not present and the instant dispute is clearly distinguishable from those involved in the Awards relied upon by Employes in support of the claim. There is no evidence that Claimant was denied any rights accruing to him under the Rules Agreement between the parties nor that he was in any way affected by Carrier's violation of the National Vacation Agreement, as amended.

Therefore, we must conclude that Carrier has not violated any obligation to Claimant, imposed by the Clerks' Agreement, in connection with the rearrangement of its forces to fill vacancies caused by employes being on vacation.

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

On basis of claim at issue and Employes' Statement of Position, 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 29th day of July 1966.

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