

Award No. 15500
Docket No. CL-16061

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

INDIANA HARBOR BELT RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5950) that:

(1) Carrier violated the Agreement when on December 24, 1964, it failed to call Doris E. Jebsen on her rest day to fill a vacancy as third trick Crew Dispatcher-Clerk at the Blue Round House.

(2) Doris E. Jebsen shall now be paid eight (8) hours at the overtime rate of the third trick Crew Dispatcher-Clerk at the Blue Island Round House.

EMPLOYEES' STATEMENT OF FACTS: Doris E. Jebsen is the regular third trick Crew Dispatcher-Clerk at the Blue Island Round House. Thursday, December 24, 1964, was one of her regular rest days and the work on that day was scheduled to be covered by a regular relief employee. The regular relief employee was not available on that day and the Carrier called a junior clerk, Rosemary Stroh, who had already worked eight (8) hours that day, to cover the vacancy.

Doris E. Jebsen carries a seniority date of August 6, 1957, and Rosemary Stroh carries a seniority date of March 20, 1960, on Indiana Harbor Belt Seniority Roster No. 8, covering the Clerks in the Locomotive Department.

Rosemary Stroh was a "Surplus Employee" under the provisions of an Agreement, copy attached and marked "Employees' Exhibit No. 1," signed November 6, 1964, in connection with the abolishment of Clerk Crew Dispatcher positions located at Norpaul and the transfer and consolidation of the work with the work of Crew Dispatcher Clerks at Blue Island.

The conditions under which Rosemary Stroh, as a "Surplus Employee," could be used to perform service are covered by Section VIII of the Agreement signed November 6, 1964, and I call attention to the last sentence of Section VIII A reading "Use of employees under provisions of this paragraph will be with due regard to the applicable rules."

Rosemary Stroh had over three years of service on the effective date of the Agreement, November 15, 1964, and under the provisions of Section IV B "will be continued on normal attrition," guaranteeing her, her former rate of pay, plus general increases, for so long as she complies with certain provisions of that Agreement or until affected by a reduction in force under Section VI.

The classification of "Surplus Employee" does not give such employee any special preference to perform work, in fact, as previously pointed out, Section VIII A of the Agreement provided for due regard to the rules in the use of Surplus Employees.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect between the parties hereto an agreement concerning rules and working conditions applicable to clerical agreement employees, effective December 1, 1949, reprinted January 1958, which is on file with your Board. By this reference, this Agreement is hereby made a part hereof. There is also in effect an agreement entered into with the Clerks' Organization effective November 15, 1964, captioned as follows: (Copy attached as Carrier's Exhibit A).

"Memorandum of Agreement between the Indiana Harbor Belt Railroad Company and its Employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, in connection with the abolishment of Clerk Crew Dispatchers positions located at Norpaul and the transfer and consolidation of the work with the work of Crew Dispatcher Clerks at Blue Island."

Claimant, Mrs. D. E. Jebson, was regularly assigned to the Crew Dispatcher Clerk position at Blue Island, Illinois. Her work week started with Friday, with rest days of Wednesday and Thursday. The assigned hours of the position were 11:00 P. M. to 7:00 A. M. On her rest days the work was performed as a part of a regularly established five-day relief assignment.

Shortly before noon, Thursday, December 24, 1964, the occupant of the regular relief position notified the Carrier that she would be unable to work the 11:00 P. M. assignment on that date. Carrier assigned furloughed surplus attrition clerk, Mrs. Rosemary Stroh, who had not worked five days of that work week, to work the vacancy.

Mrs. Jebson submitted claim for 8 hours' pay at time and one-half rate account not called to fill the above vacancy. This claim was handled on the property in the usual manner up to and including the highest appeal officer of the Carrier, who, after discussion with the General Chairman, denied the claim.

On February 11, 1966, Grand President C. L. Dennis of the Clerks' Organization notified your Board of the intent of his Organization to file ex parte submission with respect to this dispute within thirty days of the date of his notice.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a regularly assigned Crew Dispatcher with hours 11 P. M. to 7 A. M., Friday through Tuesday with Wednes-

day and Thursday as rest days. On Thursday, December 24, 1964 the regular relief employe laid off and Carrier assigned Mrs. Stroh, a furloughed surplus attrition clerk who did not have 5 days' work that week to work in place of the regular relief employe. Brotherhood claims that involved was a competition for overtime work between Mrs. Stroh and Claimant, and that Claimant, being the senior of the two, should have been given preference in getting the overtime assignment. Carrier argues (as to the merits) that the overtime competition was not the issue involved, but that what was involved was the proper filling of the one day vacancy created by the absence of the regular relief employe. If Carrier is right that the issue involved filling of a temporary vacancy, then Rule 28(a) is the governing provision of the Agreement, and the assignment of Mrs. Stroh was proper under its terms: that Rule reads:

"(a) When filling vacancies known to be of 5 days' but less than 30 days' duration (except bulletined positions pending assignment thereto) the senior qualified employe desiring same will be assigned except that where qualified extra or furloughed employes are available the first 5 days of a vacancy of indefinite duration will be assigned to such qualified extra or furloughed employes."

That Rule has been applied to vacancies of less than five days' duration.

It was the burden of Brotherhood to prove all that is necessary to establish its claim; included, in this case, would be the facts necessary to show that the issue involved was a competition for overtime rather than the filling of a one day vacancy. Brotherhood did not succeed in such proof in this record.

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 19th day of April 1967.

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