



Award No. 16589

Docket No. CL-17428

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

THE DAYTON UNION RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 6413) that:

1. Carrier violated the current Clerks' Agreement at Dayton Union Terminal on March 7 and 8, 1967, when it used a regularly assigned employe instead of an extra, unassigned employe to fill a vacancy on another regular assigned position.

2. Carrier shall now compensate Mr. D. C. Hart, senior clerical employe of The Dayton Union Railway Company, not having a regular assignment, for wage loss of \$24.95 per day for March 7 and 8, 1967.

EMPLOYES' STATEMENT OF FACTS: On March 7 and 8, 1967, Mr. D. C. Hart was an extra, unassigned clerk on the Group 1 seniority roster of The Dayton Union Railway Company. (Employees' Exhibit A). He was the senior employe not holding a regular assignment.

Position No. 4 at The Dayton Union Railway Company, a Group 1 position, became vacant on March 7 and 8, 1967 due to a death in the family of the incumbent. Position is classified as "Ticket Seller" and is rated at \$24.95 per day.

On March 7, 1967, A. G. Reed was removed from his regular assignment and required by the Carrier to work vacancy on Position No. 4. On March 8, 1967, Mr. Reed, on his assigned day of rest, was again used to fill vacancy on Position No. 4.

Mr. D. C. Hart on March 20, 1967, filed written claim with Mr. P. E. Poole, Superintendent-Agent, The Dayton Union Railway Company, for \$24.95 per day on Position No. 4 on March 7 and 8, 1967. (Employees' Exhibit B).

(2)

Part of the duties of the position which was vacant (Mr. Conner's position) is to check and handle baggage at the baggage checking counter when the regular baggage checkman is absent account lunch period, etc. See Exhibit B, particularly Section 6.

Mr. Hart had verbally informed us that account of his delicate physical condition, he could not lift suitcases, etc., and on June 28, 1966, gave us a letter advising he would not be available for any extra work, overtime or vacation relief after July 8, 1966. See Exhibit A, letter from Mr. Hart dated June 28, 1966.

(3)

Mr. Hart was furloughed on September 7, 1966.

This dispute seems to be one of deciding whether Mr. Hart would be considered as an available qualified extra employee who had not had forty (40) hours of work that week.

This Carrier does have a Memorandum of Agreement reading:

"Filling of vacancies occasioned by the absence of a regularly assigned employee who for any reason is unable to report for duty on one or more of his regularly assigned working days will be as follows: (a) By an available, qualified extra employee who has not had forty hours of work that week."

This Carrier maintains that above rule would be applicable to Group (2) Baggage and Mail Department, where an extra board is maintained, but would not be applicable in Group (1) Ticket Office, where an extra board is not maintained.

However, for the sake of discussion, if aforementioned rule was applicable in the Ticket Office Group, Mr. Hart does not fill the requirements of being a qualified extra employee per his letter (Attachment A) in which he disqualified himself account of physical condition.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves rights arising from the October 28, 1949 Agreement and the August 12, 1963 Memorandum of Agreement between the parties hereto, which Memorandum reads in part as follows:

"Filling of vacancies occasioned by the absence of a regularly assigned employee who for any reason is unable to report for duty on one or more of his assigned working days will be as follows:

- Article 2(a) By an available, qualified extra employee who has not had forty (40) hours of work that week.
- (b) By the senior available, qualified employee on the roster during the week."

Examination of the record reflects that prior to the dates on which the alleged violations are claimed the Claimant by letter informed his superintendent that because of his ill health he would not be available for extra work. There is no showing on the part of the Claimant that subsequent to that letter and prior to the dates of the alleged violations he informed the carrier that he was available for extra work.

Without deciding whether the Claimant was an extra unassigned employe within the terms of the memorandum we find that the carrier acted reasonably on the presentations of the Claimant in not calling him.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.