Award No. 16922
Docket No. CL-17343

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6738) that:

1. Carrier violated the rules of the Clerks' Agreement at Kent, Ohio when it utilized the services of A. W. McCullough, an employe holding a regular Roster "B" assignment, to work vacancy on position of second trick Chief Caller-Clerk at Kent, Ohio (a regular Roster "A" position) on May 5, 6, 7, 8, 9, June 9, 10, 11, 13, 16, 17, 18, 19, 20; July 7, 8, 9, 10, 11, 14, 15, 16, 21, 22, 23, 24, 25, 28, 29, 30, 31 and August 1, 1965.

2. Carrier shall now be required to compensate employe T. A. Coy, eight (8) hours or one day at time and one-half for each of the above dates. (Claim 1685.)

3. Carrier violated the rules of the Clerks' Agreement at Kent, Ohio, when it utilized the services of A. W. McCullough, an employe holding a regular Roster "B" assignment, to work vacancy on position of second trick Chief Caller-Clerk at Kent, Ohio (a regular Roster "A" position) on August 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 and September 1, 1965.

4. Carrier shall now be required to compensate employe T. A. Coy, eight (8) hours or one day at time and one-half for each of the above dates. (Claim 1684.)

EMPLOYES' STATEMENT OF FACTS: On May 5, 1965, the first date of the claim (Claim 1685), A. W. McCullough was regularly assigned to a Roster "B" position of Janitor-Laborer at Rittman, Ohio, with assigned hours 6:30 A. M. to 3:30 P. M., rest days, Saturday and Sunday.

Carrier used A. W. McCullough to fill temporary vacancies on Roster "A" position of Chief Caller-Clerk on all of the dates mentioned in "Statement of Claim."

From July 28 through August 1, 1965, A. W. McCullough worked in place of F. J. Archaul, who was on vacation. Claimant made no request to work the position but instituted claim under date of August 9, 1965, for eight (8) hours time and one-half each day alleging a violation of the agreement account not doubled or allowed to work his rest days which was denied under date of August 12, 1965.

From August 4 through August 29, 1965, A. W. McCullough worked in place of F. J. Archaul, who worked in place of S. D. McNeil, who was sick from August 4 through 15 and on vacation from August 18 through 29, 1965. Claimant made no application to work the position but instituted claim under date of September 7, 1965, for eight (8) hours time and one half each day alleging a violation of the agreement account not doubled or allowed to work his rest days which was denied September 8, 1965.

Under date of September 13, 1965, claimant instituted claim for eight (8) hours time and one-half for September 1, 1965, alleging A. W. McCullough worked position of 2nd Trick Chief Caller-Clerk. This was impossible as positions of Chief Caller Clerk were abolished effective August 30, 1965; therefore, there can be no claim for this date and was denied under date of September 18, 1965.

Claims were thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matter (Carrier's Exhibits A-1 and A-2). Claims were discussed in conference on February 1, 1967 and denied with denial confirmed under date of March 22, 1967 (Carrier Exhibit B). Subsequent exchanges of correspondence are evidenced by the following Exhibits:

Carrier Exhibit C – General Chairman's letter dated March 30, 1967.

Carrier Exhibit D – Carrier's letter dated April 25, 1967.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner, on behalf of the Claimant, has alleged a violation of several rules of the basic Agreement as well as a violation of a Memorandum Agreement incorporated in the record. We need not comment on the applicability or non applicability of all the rules and the Memorandum Agreement cited by the Organization as having been breached, because it is our judgment that the issue presented comes squarely within the purview of Rule 7, a judgment, which upon further exposition of the factual situation, we believe to be sound.

Claimant was regularly assigned as the first trick Chief Caller-Clerk at Kent, Ohio, a Roster "A" position with duty hours of 8:00 A. M. to 4:00 P. M. Mr. Archaul was regularly assigned to the second trick Chief Caller-Clerk position at the same location, a Roster "A" position with duty hours of 4:00 P. M. to midnight.

Archaul, having submitted a request to work on all of the dates listed in the claim with the exception of July 28 to August 1 inclusive, when he was on vacation, did in fact work these dates on short vacancies of less than 30 days each in place of other regularly assigned clerical employes who were absent for a variety of reasons, vacations, illnesses, etc. On each of the dates involved in the claim, McCullough, regularly assigned to a Roster "B" position of Janitor-Laborer, made a request to work the temporary vacancy on Archaul's position.

Claimant urges upon us the proposition that Carrier has violated the contract by utilizing a Roster "B" employe on a Roster "A" position and has accordingly demanded 8 hours at time and a half on all of the specified dates.

There is no rule in the subject Agreement which prevents Carrier from doing precisely what it did in this case. Nor is there any prohibition in the Memorandum Agreement. Indeed after a reading and analysis of the cited rules and Memorandum Agreement, one is left with the impression that it was the intent of the contracting parties to encourage and permit the interchange of Roster "A" and Roster "B" employes, once they have so qualified.

Further, there is no evidence in this record that Claimant ever made application for the vacancies, which is a fundamental pre-requisite for filling them. Nor is there any merit to the argument advanced that these vacancies should have been bulletined, since Rule 7 (e) of the contract provides:

> "(e) New positions or vacancies of thirty (30) calendar days or less duration shall be considered short vacancies and may be filled without bulletining. When there is reasonable evidence that such new positions or vacancies will extend beyond the thirty (30) day limit, they shall then be bulletined, showing probable duration."

Since none of the vacancies were in excess of 30 days and in the absence of "reasonable evidence" that they would be extended beyond 30 days, Carrier was not contractually bound to bulletin them.

It appears to us that the controlling section of the contract in this case is 7 (g) which states:

> "(g) When filling temporary vacancies, extra qualified employes will be given preference in filling vacancies of three (3) days or less duration. Senior qualified employes making application for temporary vacancies in excess of three (3) days and less than thirty (30) days will be given preference."

It is clear that extra employes have a preferential right to the first three days of a temporary vacancy, but since no extra employes were available to fill the position during the first three days, that portion of the rule is inapplicable. The words "senior qualified employes," in the absence of a delimiting definition to the contrary, and, in the absence of any other contractual prohibition, can and does encompass within its meaning an extra employe, a regularly assigned employe, a Roster "A" and Roster "B" employe. Had Claimant filed for these vacancies in preference to working his regular assignment, he would have been entitled to fill them. Having made no application and confronted with McCullough's application as the senior qualified employe on record, Carrier had no alternative other than to give him the assignment. This was in strict compliance with Rule 7 (g). We will deny the 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 respectievly 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 29th day of January 1969.

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