Award No. 17188
Docket No. CL-17242

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

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

SEABOARD COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6304) that:

(1) The Carrier violated the existing Clerks' Agreement at Savannah, Georgia, when they arbitrarily removed Mrs. S. M. Royal from her regularly assigned position and required her to work position of another employe without compensating her in accordance with and as stipulated in the Agreement.

(2) Mrs. S. M. Royal be paid one (1) hour at time and one-half time rate for each date July 18 through July 29, 1966.

EMPLOYES' STATEMENT OF FACTS: Mrs. S. M. Royal, hereinafter referred to as Claimant, holds clerical seniority on District 14, in which Savannah, Georgia, is located. The Claimant is regularly assigned to the Messenger position, working 9:00 A.M. to 6:00 P.M., Monday through Friday, with Saturday and Sunday rest days.

On Monday, July 18, 1966, Claimant was required to go on the PBX Operator's position and work through Friday, July 29, 1966. The PBX Operator position is regularly assigned 8:00 A.M. to 5:00 P.M., Monday through Friday, with Saturday and Sunday rest days. This caused Claimant to work one (1) hour outside of her regularly assigned hours. Claim was made for one (1) hour at the punitive rate for July 18 through July 29, 1966.

The exchange of correspondence below shows that Claimant did not request or volunteer to work assignment other than her own.

"Savanah, Ga., July 13, 1966

"Mrs. S. M. Royal
Mrs. Erma Millikin

"Mrs. Royal protect PBX board Monday July 18th relieve Mrs. Milikin for 10 days vacation. R-396

I. J. Jones
11:45 P.M."

instead Miss Carrie should have been used as a full time relief employee relieving the PBX position during the vacation period. As information to you, the minor experience acquired by Miss Carrie as a PBX operator did not sufficiently qualify her in that such experience did not include the opening or closing of the switchboard which entails the handling of all necessary night connections. Had she been qualified to fully perform the duties required of a PBX operator it would not have been necessary to have rearranged Mrs. Royal from her position of Messenger.

"Mrs. Royal was rearranged from her position pursuant to Rule 24 and during the period of claim did not perform any overtime; therefore, Rule 44 is not involved as alleged by you. This case is actually similar to those of Clerk L. W. Crosby at Savannah, Georgia, for 29 minutes overtime rates, dated May 24, 27, 28 and 31, 1964, which were disposed of October 28, 1966.

"There was no contractual violation in the Crosby claims and there is likewise no violation here. The claim is, therefore, denied."

GENERAL CHAIRMAN TO DIRECTOR OF PERSONNEL DATED FEBRUARY 13, 1967

"This will acknowledge receipt of your letter of February 2, 1967, your File G-90-A-5, concerning claim of Mrs. S. M. Royal at Savannah, Ga.

"In your last two paragraphs, in which you denied the claim, you stated that this case is actually similar to those of Clerk L. W. Crosby at Savannah, Georgia, for twenty-nine minutes overtime rate, dated May 24, 27, 28 and 31, 1964, which was disposed of October 28, 1966 and you further stated that there was no clerical violation in Crosby's claim and there was likewise no violation here.

"I cannot agree that the Crosby claims have anything whatsoever to do with the instant or any claims similar that might be filed and I refer you to my letter of October 28, 1966 and I quote a portion:

'This is to advise I am withdrawing without precedent or prejudices in any other similar case the following claims.'

"The claims of Crosby you referred to in your letter are included; therefore, I take an exception of your reference to the Crosby claims."

OPINION OF BOARD: At all pertinent times Claimant, Mrs. S. M. Royal, was a regularly assigned Messenger with hours 9:00 A.M. to 6:00 P.M. Monday through Friday.

She was an experienced PBX operator as well, so when the regularly assigned PBX operator (hours 8:00 A.M. to 5:00 P.M., Monday through Friday) went on vacation, Carrier moved Mrs. Royal to that position. The switch was not voluntary—Mrs. Royal protested the transfer.

The complaint is that Mrs. Royal, while working only eight hours a day, was required to work one hour a day on a shift outside her own and should have been paid overtime, rather than straight time, for such hour's work on the days indicated.

For rule support Petitioners rely principally on Rule 44 of the Agreement effective August 1, 1957. (Letter from General Chairman Davenport to Director of Personnel Duffer, November 25, 1966: "It is evident from the provisions of Rule 44 that the Agreement was violated . . .").

Carrier's defense is based on two assertions:

(1) "Mrs. Royal was rearranged from her position pursuant to Rule 24 and . . . (2) Rule 44 is not involved as alleged by you." (Duffer to Davenport, February 2, 1967.)

The following portions of Rule 44 are pertinent:

> "(a) Except as otherwise provided, time in excess of eight (8) hours, exclusive of the meal period, on any day (24-hour period computed from time first started to work) will be considered overtime and paid for on the actual minute basis at the rate of time and one-half.
>
> (b) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) (3) of Rule 43.
>
> * * * * *
>
> (g) Except as otherwise provided, when an employee 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 44(a) and (b) sets forth the basic definition of overtime: over 8 hours in a 24-hour period, over 40 hours in a work week. Rule 44(g) goes beyond this basic concept and provides that when an employe works "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."

We interpret this provision to cover the instant situation. A 9:00 A.M. to 6:00 P.M. shift is not the same as an 8:00 A.M. to 5:00 P.M. shift. Mrs. Royal was required to work within her own shift for 7 hours (9 to 5) and on another shift for 1 hour (8 to 9) in addition. She should have been paid time and one-half during such hour.

Carrier cites Award 14599 (Ives) as support for its contention, asserting Rule 24 gives it the right to rearrange forces without penalty except when such rearrangement "requires an employee to . . . work a shift in addition to his own in a 24-hour period." Carrier further observes that Claimant did not "start another shift in a 24-hour period." These arguments of Carrier endeavor to create the impression that Rule 44(g) is designed to cover simply a situation where the employe works his full shift in addition to part or all of another within a 24-hour period. This argument would reduce Rule 44(g) to an inane echo of Rule 44(a) which would fully cover the situation.

Award 14599 provides no support for Carrier's position; on the contrary, such award supports the instant claim. In Award 14599 the same parties were involved as are here before us. In that case one of the claimants worked for two full shifts in a 24-hour period. Carrier claimed the right under Rule 24 to pay for all such time at the pro rata rate. The claim for overtime was sustained, Referee Ives observing, "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 . . . 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)."

Not only did Mrs. Royal not ask for the rearrangement here, she protested it promptly. Rule 24 does not apply.

Carrier further cites Award No. 14696 (Ives) and the various National Vacation Agreements as its authority for switching Mrs. Royal as was done. There is nothing in such award or in any National Agreement which gives Carrier license to avoid the overtime pay which it contracted to pay its employes under the circumstances outlined in Rule 44(g).

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 Agreement (Rule 44(g)) was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.

CARRIER MEMBERS' DISSENT TO AWARD NO. 17188, DOCKET NO. CL-17242

Award 17188 places a strained interpretation on Rule 44(g), attempts to restrict the right of the Carrier to rearrange its forces to cover vacation absences, and is contrary to precedent Awards of this Division.

In Award 10957 (Dolnick) it has held:

"Korby was on vacation from February 1 to February 14, 1957 and the balance of the time he was on leave of absence. The National Vacation Agreement permits the Carrier to use regular employes to relieve employes on vacation when noo qualified extra employes are available. This is true even though the Carrier shifts regular employes around to take care of the vacation absence. Referee Morse, in answer to a question raised for the interpretation of Article 6 of said National Vacation Agreement, defines 'vacation relief workers' as follows:

> '. . . The term also includes regular employes who may be called upon to move from their job to the vacationer's job for that period of time during which the employe is on vacation.'

"Award 7330 (Coffey) also considered Article 6 of that Agreement. While we sustained the claim in that case because more than 25% of the blanked position was distributed to other employes, and while that issue is not involved in the case at hand, we are impressed with the general interpretation of Article 6. It is sufficiently pertinent to quote as controlling to the issue here involved. We said in that Award:

> 'There is much to be said for Carrier's position that the National Vacation Agrement, as interpreted, allows for some rearrangement of forces. Neither can fault be found with the general proposition that the Vacation Agreement is not to serve as a "make work" device.
>
> 'The expression, "vacation relief woekers" is defined in general terms by the National Vacation Agreement to mean all persons who fill the positions of vacationing employes. That definition, as interpreted, takes in regular employes who may be called upon to move from their job to the vacationer's job for the period of time during which the employe is on vacation.
>
> 'A careful reading of the record out of which came the foregoing interpretation conclusively proves that, the needs of the service permitting, and rules not prohibiting, Carrier may utilize the services of regular employes for vacation relief even to the extent of moving a regular employe from his job to the vacationer's job for the period of time during which the employe is on vacation.'

"While the factual circumstances in Award 7773 (Smith) are not similar to those involved here, we did say:

> 'We think the Vacation Agreement contemplates that the work of an employe on vacation should be (1) left undone, (2) assigned to other employes covered by the Agreement (3) performed by the relief worker (4) performed by the regular assigned employes under certain circumstances.'

"It is not the purpose of the Vacation Agreement to impose on the Carrier additional half time penalty pay during an employe's

vacation absence. If no extra qualified employe is available and if the principle of seniority is preserved, the Carrier may arrange his work force in such a manner that will enable him to operate efficiently. It goes without saying, that in arranging his work force, the Carrier may not penalize the employes transferred and may not contravene any specific terms of the Agreement. We fail to find anything in the present Agreement which prohibits the Carrier from assigning a regular employe under these circumstances to temporarily replace an employe on vacation. None of the Awards cited by the Organization directly involve reassignments to fill vacation absences."

The same principle was adhered to in Award 11406 (Hall) where an employe with regularly assigned hours of 8:00 A.M. to 4:30 P.M. was transferred from his regular assignment to another assignment with hours 3:30 P.M. to 12:00 midnight. In Award 14696 (Ives) we held:

"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. * * *"

Based on the record, the rules involved, and precedent Awards of the Division, the claim herein should properly have been denied. During the period involved in the claim the Claimant was required to work on one shift, namely, from 8:00 A.M. to 5:00 P.M.

The Award is in serious error and we dissent.

/s/ P. C. Carter
P. C. Carter

/s/ W. B. Jones
W. B. Jones

/s/ R. E. Black
R. E. Black

/s/ G. L. Naylor
G. L. Naylor

/s/ G. C. White
G. C. White

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