Award No. 17189
Docket No. CL-17253

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-6312) that:

(1) The Carrier violated rules of the National Vacation Agreement and the Clerks' Agreement at Jacksonville, Florida, when it required R. A. Brannon, Assistant Head Clerk, to suspend the work assigned to him and perform all the duties of Mrs. L. P. Turner's position of Timekeeper while she was on vacation July 5, 6, 7 and 8, 1966.

(2) Clerk R. A. Brannon be paid six (6) hours at the punitive rate of his position for July 5, 6, 7 and 8, 1966.

EMPLOYES' STATEMENT OF FACTS: Mr. R. A. Brannon, hereinafter referred to as Claimant, holds clerical seniority on District 11, in which the Division Auditor's office at Jacksonville, Florida, is located.

The Carrier has in the office of Division Auditor at Jacksonville, Florida, a position titled Timekeeper, Symbol No. 38, work week Monday through Friday, with rate of $23.22 per day and assigned hours of 8:00 A.M. to 4:30 P.M. to which Mrs. L. P. Turner is assigned. The Claimant is assigned to Symbol No. 46, Assistant Head Clerk (Employe's Exhibit "A"). There is, also, a position titled Machine Operator—Distribution Clerk (Employe's Exhibit "B").

The Carrier required Claimant on July 5, 6, 7 and 8, 1966 to suspend the work assigned to him and perform all the duties of Mrs. L. P. Turner's position of Timekeeper, Symbol No. 38, while she was on vacation; and, Claimant's position was not filled on the dates he was required to fill Mrs. Turner's position.

The occupant of the position shown in Employe's Exhibit "B" has the duty of relief for a number of positions in this office, one of which is Mrs. Turner's position but was not used to do so on these dates.

On July 30, 1966, District Chairman W. R. Bailey filed a claim with Division Auditor H. A. Sharpe at Jacksonville, Florida. Division Auditor Sharpe declined the claim on September 12, 1966. Quoted below is the correspondence exchanged:

"With respect to claimant being required to perform more than 25% of the work of Mrs. Turner's position, I would like to call your attention to Third Division Award 11089 with Referee Robert O. Boyd serving as the neutral. The claimants in that case were in a position similar to the claimant in the instant case. In the opinion of the Board in Award 11089, it was appropriately held:

> " 'However, no claim is made by or on behalf of such employees. The claimants here were fully employed and compensated for their time. Furthermore, we can find nothing in the record to prove the basis for the claim of '33 hours each at punitive rate of the Station Accountant'. There being nothing in the record to support the Item (c) as stated in the claim, the Board has no recourse but to deny this item.'

"Your attention is further directed to your files G-7 and C-2 appealing to me the claims of Clerks M. V. Cronic, H. L. Combs and D. M. Massey at Atlanta, Georgia, Freight Station. In that instance our decision of declination dated June 13, 1963, wherein we referred to Award 11089, was accepted as final and binding in that it was not further appealed pursuant to Rule 27(c).

"On the basis of Award 11089, which is a binding interpretation of Article 10(b) of the Vacation Agrement, as well as established precedent thereunder, plus the Board's decision in Award 11406, the claim here is without merit and is denied."

OPINION OF BOARD: Mrs. L. P. Turner was the sssigned Timekeeper in the office of the Division Auditor at Jacksonville, Florida when she went on vacation in early July of 1966. On July 5, 6 7 and 8, Claimant R. A. Brannon worked her assignment. Mr. Brannon was regularly assigned as Assistant Head Clerk, and ordinarily the Timekeeper vacancy would have been filled by the occupant of the position of Machine Operator-Distribution Clerk, such occupant having the duty of Relief Timekeeper. His absence, however, is unexplained in the record, and the case does not rest on the failure to use him but rather on the use of Mr. Brannon in alleged violation of the National Vacation Agreement and of various rules of the Agreement. Petitioners particularly cite Rules 1, 3, 44, 47 and 62, but Rule 47 is the only rule which was seriously urged, along with Article 6 and Article 10(b) of the National Vacation Agreement of December 17, 1941.

We set forth the pertinent rules:

"RULE 47. ABSORBING OVERTIME.

"Employees will not be required to suspend work during regular hours to absorb overtime."

"NATIONAL VACATION AGREEMENT.

Article 6.

The carriers will provide vacation relief workers but the vacation system 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 employees remaining on the job or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

"Article 10 (b).

Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five percent of the work load of a given vacationing employee can be distributed among fellow employees 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."

Rule 47 was in existence prior to the effective date of the National Vacation Agreement. In Award 11406 Judge Levi Hall wrote "That Rule 31 (47 here) has not been abrogated by the Vacation Agreement has been held in prior awards of this Board; every effort should be made to reconcile it with the Vacation Agreement." We re-affirm that the absorption of overtime Rule was not abrogated by the National Vacation Agreement, yet it would be unrealistic to contend that the scope of the former was not restricted by the latter. There are many applications for Rule 47, but where vacation relief is concerned an employee can definitely "be required to suspend work during regular hours to absorb overtime." But for overtime there would be no problem associated with vacation relief. The National Vacation Agreement, moreover, is obviously designed to facilitate vacations with minimal overtime penalty for relief work. Thus we have held that, as was done in the instant circumstances, an employe may be temporarily switched from his position to provide relief. Award 10957 (Dolnick)

When an employe takes his vacation Carrier has these two alternatives to avoid overtime under the National Vacation Agreement:

(1) Up to 25% of the vacationer's work may be absorbed by other employes without penalty or

(2) Another employe may be moved into the position (suspending work, during regular hours, on his own position).

In either case there are circumscriptions imposed by the terms of Article 6 National Agreement:

(1) The arrangement must not burden fellow employes remaining on the job and

(2) The arrangement must not burden the employe after his return from vacation.

Patently, without outside relief the absence of an employe either imposes on his co-workers an additional burden during his absence or else he faces an accumulated burden upon his return. This would, or should, be so in every case. We therefore conclude that the framers of the National Vacation Agreement had in mind those situations where the resultant burden would in no event be inordinate—otherwise an extra employe would be required.

There is no showing that any undue or inordinate burden devolved on anyone as a result of the arrangement herein challenged. On the contrary,

in his letter to District Chairman W. R. Bailey of September 12, 1966, Division Auditor Sharpe makes cogent and painstaking defense of the handling of the matters. Such defense eliminates any suspicion that anyone was unjustly burdened by the arrangement. In the absence of such proof the claim must be denied. Award 11544 (Rock).

We caution that this Award should be deemed precedential only for cases having identical fact situations. We re-affirm the principle stated by Referee Hall that every effort should be made to reconcile the National Vacation Agreement with the Absorption of Overtime Rule in each individual case. Here it could not be done. The former must prevail.

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.

A W A R D

Claim denied.

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.

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