



Award No. 17222

Docket No. CL-17702

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

James Robert Jones, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6426) that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Ill. by unilaterally removing regularly assigned employes from their regular positions to perform duties of Chauffeur Position 53160 on August 26, 29, 30, 31, September 1 and 2 1966, thereby requiring them to suspend work of their positions to absorb overtime that otherwise would have been required.
2. Carrier shall now be required to compensate employe Mike DeRosa for eight (8) hours at the overtime rate of Position 53160 for Friday, August 26, 1966 and for Tuesday, August 30, 1966.
3. Carrier shall now be required to compensate employe R. Klein for eight (8) hours at the overtime rate of Position No. 53160 for Monday, August 29, 1966.
4. Carrier shall now be required to compensate employe T. J. Kelly for eight (8) hours at the overtime rate of Position 53160 for Wednesday, August 31, 1966.
5. Carrier shall now be required to compensate employe A. P. Galizia for eight (8) hours at the overtime rate of Position 53160 for Thursday, September 1, 1966 and Friday, September 2, 1966.

EMPLOYEES' STATEMENT OF FACTS: Employe Thomas Kelly is regularly assigned to Swingman Position 53280 at Chicago, Ill. in Seniority District No. 118, Friday through Tuesday, with Wednesday and Thursday restdays. He was available for overtime work on Wednesday August 31, 1966.

Employe Mike DeRosa is regularly assigned to Chauffeur Position 53140 at Chicago, Ill., Seniority District No. 118, from 4 P.M. to 12 Mid-night, Tuesday through Saturday, with Sunday and Monday rest days.

A copy of Mr. Hopper's aforementioned letter of "appeal" is attached hereto as Carrier's Exhibit "K."

Also attached hereto as Carrier's Exhibits are copies of the following:

Letter written by Mr. Amour to Mr. Hopper under date of April 12, 1967, Carrier's Exhibit "L."

Letter written by Mr. Amour to Mr. Hopper under date of May 18, 1967, Carrier's Exhibit "M."

Letter written by Mr. Amour to Mr. Hopper under date of November 13, 1967, Carrier's Exhibit "N."

Letter written by Mr. Amour to Mr. Hopper under date of November 30, 1967, Carrier's Exhibit "O."

Notarized statement from Mr. L. G. Cronin, District Material Manager, dated November 27, 1967, Carrier's Exhibit "P."

Notarized statement from Mr. Carl A. Krafft, General Foreman, Carrier's Exhibit "Q."

(Exhibits not reproduced)

OPINION OF BOARD: Carrier first raises a procedural defense contending that the claim presented here is substantially different from the claims initially submitted by the Claimants to the first officer of the Carrier in the designated lines of appeal. Therefore, Carrier contends this Board should dismiss the claim because Petitioner failed to comply with Section 3, First (i) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board and Article V of the August 21, 1954 National Agreement.

We feel this contention is without merit. As has been noted in other cases before this Board, we must avoid being "super technical" in resolving disputes. We agree with Referee David Dolnick in Award 11214 when he stated the following principle: "It is not the purpose of the Railway Labor Act or the August 21, 1954 Agreement to dismiss disputes on mere technicalities. It is rather, the intent to resolve them on the merits unless it is clear that the essential procedural provisions have been completely ignored or that the Carrier is unable to ascertain the identity of the Claimants." In this case, essential procedural provisions have not been ignored, nor does the Carrier have any difficulty in identifying the Claimants. Therefore, the dispute should be resolved on its merits.

Claimants base their entire claim on Rule 32 (h) concerning overtime. That rule states: "Employees will not be required to suspend work during regular hours to absorb overtime." Claimants also admit that this claim is the result of a vacation relief vacancy.

This Board feels that Rule 32 (h) is not controlling in this case. Instead, we should look to the provisions of the National Vacation Agreement, which states in effect under Article 6 that the vacation system shall not be used as a device to make unnecessary jobs for other workers. This Board has ruled in other cases that selection and assignment of

employees to perform vacation relief service is not governed by the rules of the parties' basic Schedule Agreement, but rather by the provisions of the National Vacation Agreement. Such previous rulings are based on the theory that specific provisions take precedence over the general terms of an agreement between parties.

We cannot find that the Carrier violated the provisions of the National Vacation Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1969.