

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19540  
Docket Number CL-19398

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6953) that:

1. Carrier violated the rules of the Clerks' Agreement at Milwaukee, Wisconsin when, over his protest, it required an employee to work C&O Position No. 3, Assistant Rate Clerk, on December 22, 23, 24 and 26, 1969.

2. Carrier shall now be required to compensate employee M. R. Glendenning for an additional eight (8) hours at the penalty rate of Demurrage Clerk Position 07140 for each day, December 22, 23, and 26, 1969; and an additional four hours at the penalty rate of Demurrage Clerk Position 07140 for December 24, 1969.

OPINION OF BOARD: The Record in this dispute is replete with allegations of both parties. Stripped of surplusage, the file in this case reveals that the regular occupant of C&O Position No. 3, Assistant Rate Clerk, was absent account vacation.

Claimant, the regular incumbent of Demurrage Clerk Position 07140, alleges that he was required to vacate his position and perform the duties of position of Assistant Rate Clerk for eight (8) hours each day, December 22, 23, and 26, 1969 and for four (4) hours on December 24, 1969. This requirement, Claimant contends, violated paragraph (a) of Rule 32, Overtime, and Articles 6 and 10(b) of the National Vacation Agreement. These provide:

"Rule 32 - Overtime

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

"Article 6. The Carrier 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 per cent 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."

It is Carrier's contentions that Rule 17 of the Agreement provides for an employee assigned to one position being temporarily assigned by proper authority to another position, as was done in this instance; that Claimant, having been so utilized, was compensated at his own higher rate of pay while performing the duties of the Assistant Rate Clerk position, strictly in accordance with Rule 17 (a) and (b). Carrier further avers that the amount of time spent by Claimant while temporarily assigned to the position of Assistant Rate Clerk did not exceed two (2) hours' work on any date involved in the claim.

Additionally, Carrier takes exception to the Organization's injection at the highest level of appeal, of an alleged violation of Articles 6 and 10(b) of the Vacation Agreement, declaring that such new theory changed the basis of the claim to the extent it was no longer the same claim handled on the property at the initial and subsequent levels in the appellate procedure. We feel constrained to reject Carrier's argument on this point. The purpose of the Railway Labor Act and the Rules of Procedure of the Board (Circular No. 1) is to require full exploration of all possibilities of settlement - either allowance of the claim and/or grievance by Carrier, or withdrawal thereof by Petitioner - of claims and grievances while the dispute is still being considered between the parties on the property.

Notwithstanding its objections, Carrier likewise introduced new evidence to the Organization's top Representative which had not been theretofore handled with any subordinate Organization representative on the property, in the form of two notarized statements, one from its Chief Clerk and the other from its Assistant Agent, attesting that Claimant was assigned to perform some of the duties of the Assistant Rate Clerk's position, but not exceeding two (2) hours' work each day. This 2-hour-per-day argument and evidence presented by Carrier counters the Employees' arguments pertaining to the Vacation Agreement, i.e., Carrier is permitted to distribute two hours (25%) of the vacationing employee's work load (Article 10(b)), and there is no showing that either the employees who performed the work or the returning employee was burdened because of Carrier's failure to provide a vacation relief worker (Article 6).

The Record is devoid of any rebuttal or challenge by the Employees with regard to the aforementioned notarized statements; finding nothing to repudiate them, and since the burden is on the Petitioner to overcome evidence of probative value submitted by Carrier, we will dismiss 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 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 Claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.