

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19669
Docket Number CL-19554

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7049)
that:

(1) Carrier violated the rules of the Clerks' Agreement when it assigned clerical work to extra clerical employees in the Office of the Superintendent of Shops, Cumberland, Md. on May 20, 25 and 26, 1970, and such clerical work is work which is normally and regularly performed by incumbent of position of General Clerk in that office, and

(2) E. J. Zembower shall be paid an additional 8 hours' pay at over-time rate for each date, May 20, 25 and 26, 1970, at the rate of pay attached to his position of General Clerk.

OPINION OF BOARD: On claim dates Carrier used extra employees in the Office of Superintendent of Shops at Cumberland, Md. to perform clerical work in that office which work, the Organization alleges, is normally and regularly performed by claimant who holds the position of General Clerk therein, and was identical to that work generally performed by claimant. The extra employees were paid at the pro rata rate of pay attached to the position of General Clerk.

It is the Organization's contention that on the dates in question there were no vacancies in the Office of Superintendent of Shops and Rule 25 prescribes that extra employees may only be used to fill vacancies. Ergo, when Carrier used extra employees not to fill vacancies but to augment the regular work force in the office it violated Rule 25. Claimant, the Organization maintains should have been used at the punitive rate to perform the clerical work, not extra employees.

Carrier denied the claim alleging that Rule 25 does not restrict it to using extra employees only to fill vacancies. The work herein performed was not of a recurring nature, was not part of the assigned duties of the positions in the Office of Superintendent of Shops, and was not identical to the work performed by claimant and thus could be performed by extra employees. Furthermore, Carrier contends there was a vacancy in the Office which vacancy was properly filled by extra employees. The Organization, however, denies this.

We cannot agree with the Organization's contention that it was the intent of Rule 25 to restrict Carrier to using extra employees only to fill vacancies. Rather we are persuaded by Carrier's rationale that Rules 24, 25 and 26 were intended to be construed together. So reading these Rules, we conclude that it was

not the parties intention to restrict Carrier to the use of extra employees only to fill vacancies. Rule 25 merely outlines the proper procedure when extra employees are, in fact, used to fill vacancies. Merely because the word vacancy appears therein does not restrict Rule 25 in the manner the Organization would have us believe. Thus we find that Rule 25 was not violated when Carrier used extra employees to perform the clerical work in question.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.