

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19912
Docket Number CL-20018

Frederick R. Blackwell, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7176)
that:

1. The Carrier violated the rules of the Agreement extant between the parties when it failed to establish a regular position at Fremont, California and in lieu thereof used a furloughed clerk for the performance of said work.

Mr. C. F. House shall be allowed one day's pay for each day in excess of thirty days that Carrier used a furlough clerk in performance of the work.

OPINION OF BOARD: The position of Rate & Bill Clerk in Carrier's freight office, Fremont, California, was reclassified to Car & Demurrage Clerk on May 12, 1971 and, as a result, Mrs. Connie Gordon, the former Rate & Bill Clerk, was reduced to furloughed status. Mrs. Gordon continued to work in the Fremont office after May 12, and Petitioner says she worked a vacancy which, after the first 30 days, should have been bulletined under Rule 21 of the Agreement. Carrier says Mrs. Gordon worked short vacancies and performed extra work which, in view of her furloughed status, was proper under Rule 40.

As initially submitted on the property the claim asserted that:

"*** Mrs. C. Y. Gordon has been working at Fremont for a period well in excess of sixty days as a 'furloughed clerk'. She is performing regularly assigned duties and enjoys regularly assigned hours, meal periods, rates of pay and rest days on a consistent five-day week basis.

The Carrier's failure and refusal to properly bulletin and assign clerical positions of more than thirty days duration can only be construed as an overt and deliberate violation of the terms of the currently effective Clerks' Agreement...and a serious violation of the seniority rights of other clerical employees."

When challenged on the property for vagueness, and for failure to provide the dates and position worked by Mrs. Gordon in excess of 30 days, the Organization said such information was not in its possession and could be obtained only through a joint check of Carrier's records. A joint check was not made; however, in support of its denial that a vacancy existed, Carrier's submission

includes an exhibit containing copies of the Fremont station payroll for May, June, and the first half of July 1971.

We think the claim was not too vague and that it must be considered on the entire record before us. It is clear that Rule 30 required a bulletin if a vacancy existed for 30 days, so, we must determine the fact issue of whether such a vacancy existed. The only material in the record relevant to this issue is the payroll records which, though submitted by Carrier, must be allowed to shed whatever light they can on the positions of both parties. These records show that, concurrent with her change from a regularly assigned position to furloughed status on May 12 and 13, Mrs. Gordon's pay rate was changed from \$33.11 to \$32.53; she worked at this latter rate (\$32.53) from May 13 through June 24; for June 25, her rate of pay was \$31.64; from her next work day of June 28 through July 14, her rate was \$32.53 - the same as in the May 13 - June 24 period; she did not receive pay for May 18, but, of the ten employees on duty at Fremont, only the Agent received pay for this day; and she did not work on, but received holiday pay for, May 31 and July 5.

The payroll records thus evidence that Mrs. Gordon worked at the same pay rate (\$32.53) over a period of 43 calendar days. (May 13-June 24). This pattern was broken by a different pay rate on June 25, after which she again worked at the same rate (\$32.53) for another period of 19 calendar days. (June 26-July 14). From these facts we conclude that a vacancy existed which should have been bulletined at the end of 30 calendar days in the 43 calendar day period that is, on June 12, 1971. The vacancy existed for only 13 calendar days, however, as the different rate of pay on June 25 evidenced its termination on that date. From June 26 onward, the payroll records cover only 19 calendar days and therefore fail to show that, after June 26, a vacancy existed for 30 days.

In view of the foregoing we shall sustain the claim in part and dismiss it in part. We shall sustain the claim to the extent of the difference, if any, between the rate of claimant's assigned position and the \$32.53 rate applicable to the vacancy worked by Mrs. Gordon during the 13 calendar days from June 12 through and including June 24, 1971. Awards 4075 (Carter) and 13652 (Englestein). In all other respects, the claim is dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion. Otherwise, the claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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