NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20334
Docket Number MW-20306

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Norfolk and Western Railway Company
((Lake Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it abolished the positions of combination carpenter-relief drawbridge engineer at Buffalo, New York on October 15, 1971 and at Cleveland and Lorain, Ohio on October 22, 1971 and concurrently therewith furloughed the incumbents thereof while requiring the first shift operator at each location to perform the work of the abolished positions at overtime rates (System File MW-BVE-71-16).

(2) The incumbents of the aforesaid combination positions (Gordon Hackett at Buffalo; Thomas Segedi at Cleveland; W. H. Roth at Lorain) each be allowed 40 hours' pay at their respective rates of pay beginning with the date of their respective furloughs and continuing until they are returned to service on the positions from which they were furloughed.

OPINION OF BOARD: Claimants seek 40 hours' pay at their respective rates of pay beginning with date of abolishment of their positions and then being furloughed. The circumstances are as follows. At three locations on the Lake Erie Division, Buffalo, New York, Cleveland and Lorain, Ohio, the Carrier maintains three drawbridges. These drawbridges are operated by employees covered by the February 1, 1951 Agreement made by the New York, Chicago and St. Louis Railroad Company and the Brotherhood of Maintenance of Way Employes, which agreement covers the the Carrier's employes on what was formerly known as the Nickel Plate Road. Drawbridge operator positions, when in existence, are maintained around-the-clock, seven days per week. Since the inception of the 40 hour work week in 1949, in order to provide each regular drawbridge operator with five consecutive work days and two consecutive rest days, the schedules have provided: at each of the three bridges, (1) three regular five day positions, one on each of the three shifts; (2) one regular five day relief position to relieve two of the aforesaid regular positions on each of their respective two rest days for a total of four relief days and to relieve on one of the two remaining rest days of the third position; (3) this left one rest day of each regular five day position to require relief (generally referred to as "tag end relief day"). This tag end relief was provided by establishing three positions, consisting of four days as carpenter in the Bridge & Building gang, and one day as relief drawbridge engineer. The three Claimants herein occupied these three tag end relief positions which were abolished.

On October 15, 1971, the carpenter-relief drawbridge operator position at Buffalo was abolished, and on October 22, 1971, the positions at Cleveland and Lorain, Ohio were abolished. Following the abolishment of the positions, the tag end day was worked by the regular incumbent and was paid for at overtime rate. The Organization has made no objection to the regular incumbents working on their rest day. They contend, however, that in requiring the incumbents to work on their rest day, the Claimants were deprived of their agreement rights to the positions which were abolished. The Carrier, on the other hand, asserts its managerial prerogative and responsibility to abolish positions which in its judgment are not needed, denying it has any contractual obligation to continue four days of unneeded carpenter positions in order to provide one day of tag end relief.

Basic to the contentions of the parties, is Rule 24(f) of Agreement, reading in pertinent part:

> (paragraph 1) "All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under this agreement or as may be agreed upon between the carrier and the General Chairman."
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> (paragraph 4) "It is understood that regular relief assignments may include one, two, three or four days' service as track or B&B employes and that on the other days of the five-day week such employes will be assigned as relief crossing watchmen, drawbridge operators or pumpers as designated by the bulletin. Seniority in such positions will not be accumulated in the track or B&B service to which assigned."

We construe Rule 24(f), first paragraph, as mandatory and not permissive. The language, "All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof***", includes the terms, "will be established" which are plainly mandatory. Although the fourth paragraph uses the term "may" in the clause, "regular relief assignments may include one, two, three, or four days' service***" we read these terms as descriptive of what "regular relief assignments" may include and not as qualifying the mandatory requirement of the first paragraph that regular relief assignments "will be established".

Each term, of course, in Rule 24(f) must be given effect. The phrase, "All possible regular relief assignments", at the beginning of the first paragraph, contains the term "possible". The term "possible" is not redundant or unnecessary. Nor can this Board subtract the term by rewriting the rule under the guise of interpretation. The term "possible" qualifies the mandatory obligation of the Carrier to establish regular relief assignments. If the condition in fact exists that "possible" regular relief assignments can be established, then the Carrier's duty to do so is operative. If no "possible" regular relief assignment can be established, then the Carrier's obligation to do so is not operative. As this Board has held in Award No. 14092, (Dolnick) the Claimant has the burden of presenting probative evidence in support of the claim that the regular relief assignment was "possible". In the instant case, there is no such showing of probative fact by the Petitioner. Nowhere in the record, which we have carefully reviewed, is there evidence to controvert the Carrier's stated judgment that the four days of carpenter work included in Claimant's positions were not needed. Nor do the Employes present probative evidence otherwise to show how "possible" regular relief assignments might have been put together of work elements.

We are mindful of the principle expressed in Award No. 5127 (Coffey):

> "As an abstract principle, the decisions of this Board uniformly hold that where the work of a position remains, it may not be abolished, but if the work has disappeared in whole or to such an extent as to leave nothing for the employe to do for a substantial part of his time and for a reasonably sustained period, the position may be abolished. However, the Carrier may not, under the pretense of abolishing positions, evade the application of an established rule, nor take an undue advantage of the employes by discontinuing positions when there is a real necessity for their continuation."

Applying the aforestated principle to the facts and rules of agreement in the instant case, it is our opinion that the Carrier has not evaded the application of an established rule nor taken an undue advantage of the employes by discontinuing positions when there was no real necessity for their continuation. The Carrier properly abolished Claimants' positions of four days of unneeded carpenter work and one day of tag-end relief performed by the regular incumbent on his rest day as overtime to which there is no objection by the Petitioner.

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: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.