

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20983
Docket Number CL-20893

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7678)
that:

(1) Carrier violated the Clerks' Working Agreement at Auburn, Washington Yard Office by unilaterally removing a regular assigned employee from his regular position of Manifest Clerk No. 107-C to fill vacancies on the position of General Clerk No. 103-A.

(2) Carrier shall now be required to compensate employee, Mr. R. L. Ainsworth, regularly assigned occupant of Position No. 107-C, Manifest Clerk, eight hours straight time for July 26, 1973, at the rate of \$39.88, in addition to compensation received.

OPINION OF BOARD: Claimant was the regularly assigned Manifest Clerk. On July 26, 1973, General Clerk (103-A) was absent due to illness, and Claimant was assigned to the 103-A position for the day. The alteration did not require a change in duty hours, and Claimant received the daily rate for the 103-A position, which was higher than his regular rate.

Claimant advised the Chief Clerk, in writing, that:

"I am working Genl. Clerk 103 under protest, because I am being forced."

Claimant's Manifest Clerk position was filled, on July 26, 1973, by an Extra List Clerk.

Claimant argues that when the position of Manifest Clerk was advertised, he was awarded the position by his seniority, fitness and ability; and once awarded the position it was his work each and every workday of the work week.

Although a number of rules have been referenced, the employees appear to rely upon Rules 14(A), 18 and 37.

"Rule 14. SHORT VACANCIES

A. Positions or vacancies of thirty (30) calendar days or less duration will be filled under the provisions of Rule 18 D, except that senior qualified employees in the immediate office or station, upon written request, will be given preference thereto, unless an available qualified extra employee is senior to such regular employee. At smaller line stations where facilities are combined and all clerical employees are under the jurisdiction of a single supervisor or officer, each such point shall be considered a single immediate station. At all other points, the term 'immediate office or station' shall be defined by agreement between the Management and the General Chairman."

"Rule 18. FORCES REDUCED, POSITIONS ABOLISHED AND
EXTRA LISTS

D. Extra lists will be maintained for each seniority district roster. Seniority rosters will be subdivided to cover different points or offices. Employees placing themselves upon an extra list will designate in writing upon which extra list they desire to be placed. Employees on the extra list not already at work will be called for service for which qualified, in accordance with their seniority. Except in cases of emergency, extra list employees will be called for service not less than one (1) hour in advance of time required to report. If extra list becomes exhausted, available employees on other extra lists in the same seniority district will be called to fill vacancies. Extra list employees, after their tour of duty on short vacancies, will return to the extra list from which called. Extra list employees must keep on file with the proper supervisor the address or location at which they are to be called."

"Rule 37. ASSIGNMENT OF OVERTIME

C. When it becomes necessary to fill short vacancies by working overtime, such overtime will be worked by available incumbent or incumbents of the classification where the vacancy exists by calling the senior available employee from that shift who is off duty that day. If unable to fill by this method, available qualified senior employees from other classifications in the same immediate office will be called."

According to Claimant, the contractual language required that the one-day vacancy in 103-A be filled by utilizing an available qualified extra list employee - unless a senior qualified employee in the immediate office had made a written request. Further, if there were no available qualified extra employees, Carrier should have utilized overtime procedures to obtain coverage.

Carrier states that of the three extra list clerks at the location, two had already been assigned to other vacancies, when this one occurred, and the third was not qualified to handle 103-A.

Carrier asserts that Rule 14B must also be considered so as to fully understand the import of the rule:

"B. In exercising rights to short vacancies or positions under such circumstances, a senior qualified employee must make a written request and place himself on the short vacancy or position within five (5) calendar days of the first day of such vacancy or position, or forfeit any right over any other regular or extra employee who is placed on such vacancy or position."

It also refers to Rule 51 (Preservation of Rates), Rule 55 and that portion of the "Ratio of Rates Agreement" which states:

"IT IS UNDERSTOOD AND AGREED that in consideration of the establishment of these rates, the Carrier shall have complete freedom in the assignment of work within the ratio, regardless of rates of pay, and that the advertised major assigned duties shown for identification purposes shall not preclude the re-assignment of such duties to lower-rated position or the use of incumbents of lower-rated positions to perform work otherwise performed by higher-rated positions."

Disputes of this type must be considered within the framework of the factual circumstances - as they apply to the applicable rules. Moreover, we must limit our consideration to the factual matter considered by the parties when the matter was under consideration on the property, and may not expand our consideration to a resolution of asserted "factual bases" for actions and agreements raised to us solely in the documents submitted to this Board.

Unquestionably, the employees present a persuasive argument when we limit our review to the rules provisions urged by them. But, Carrier refers to additional contractual obligations which speak to its rights in assigning employees.

We are aware that Claimant has dismissed consideration of those rules because his claim does not allege a violation of them; but surely a Carrier has a right to rely on rules not mentioned by Claimant when those rules justify its action.

At the risk of being redundant, we stress that this Award does not contemplate factual circumstances not before it; nor does it contemplate its results if certain allegations of the intentions of the parties had been raised in a timely fashion. Rather, we confine our review to the issue pre-

sented here which contemplates no qualified extra list employees reasonably available for the position, and no suggestion of a devious pattern designed to avoid a contractual obligation.

Surely, certain of the rules agreed to by the employees have limited the concepts expressed in Award 4352, relied upon by the Organization, to the point that on occasion, and within the purview of the particular agreement under consideration, an employee may be shifted to another position without being destructive. Such is the case here. Even presuming that the Preservation of Rates Rule and Rule 55 are not applicable, we cannot escape the wording of the ratio-of-rates agreement which speaks in terms of "complete freedom" of work assignment within the ratio.

We do not feel that the employees have shown a specific contractual obligation which requires the result it seeks. In order to reach that result through an interpretation of a number of sections - we must, of course, consider the agreement as a whole, and we find a failure of proof that the parties intended the result sought.

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 be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.