NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20998
THIRD DIVISION Docket Number CL-20815

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7656) that:

(1) Carrier violated the Clerks' Working Agreement at Auburn, Washington Yard Office by unilaterally removing a regular assigned employe from his regular position of Manifest Clerk No. 202-B to fill vacancies on the position of Assistant Chief Clerk No. 201-A.

(2) Carrier shall now be required to compensate employe, Mr. A. F. Money, regularly assigned occupant of position No. 202-B, Manifest Clerk, eight hours straight time each day, July 16 and 30; August 6, 1973, at the rate of $40.96, in addition to compensation received.

OPINION OF BOARD: On the three dates set forth in the Statement of Claim, Claimant was regularly assigned as Manifest Clerk Monday through Fridays, with Saturday and Sunday as rest days. On these three dates Claimant was instructed by his supervisor to vacate his assignment and fill one-day short vacancies in the position of the Assistant Chief Clerk who was on vacation. The Statement of Claim sets forth generally the nature of the claim as well as the relief demanded.

Petitioner's submission states that "There is no dispute as to the facts in this case, rather the dispute stems from the Carrier's application of the pertinent rules of the Clerk's Working Agreement". Petitioner contends that inasmuch as the Claimant had not made a written request to fill the Assistant Chief Clerk position, and inasmuch as there was no extra list employe to do so, the position should have been filled on an overtime basis by an off-duty regularly assigned employe.

Carrier's basic contention is that it violated none of the Rules of the Agreement and that it acted properly in filling the position of Assistant Chief Clerk, in view of the provisions of the National Vacation Agreement and the "Ratio of Rates" Agreement. Hence, that it acted in full compliance with the applicable rules and agreements when it assigned Claimant to fill the position of the vacationing Assistant Chief Clerk and, in turn, filled Claimant's position with an extra list employe who was not qualified to fill the Assistant Chief Clerk position.

Article 6 of the National Vacation Agreement of December 17, 1941 provides as follows:

> "The Carriers 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 employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

The record is devoid of any proof that such "overburdening" occurred here. Consequently Article 6 is fully applicable to the confronting claim.

In defining the term "vacation relief workers", Referee Wayne L. Morse's Interpreting Award of November 12, 1942, states in part:

> ". . . The term also includes those regular employes who may be called upon to move from their job to the vacationer's job for that period of time during which the employe is on vacation."

Article 10.(a) of the Vacation Agreement sets forth the rate of pay which governs in such situations and provides in part:

> "10.(a) An employe designated to fill an assignment of another employe on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; . . ."

Clearly, under the specific provisions of Article 6, as interpreted by Referee Morse, Carrier was within its rights in assigning Claimant to fill the vacationer's position. The record shows that Claimant was paid the higher rate of pay. Thus, compliance with Article 10.(a) is also established.

This Board has reached the same conclusions in a number of prior Awards involving the same principles and similar, if not precisely identical, facts.

Thus, in Award 17916 (Ellis), which is practically on all fours with the case before us, we held:

"Rule 43(a) of the Agreement effective September 1, 1949, and Article 6 and Article 10.(a) of the Vacation Agreement of December 17, 1941, clearly show an intent of the parties to allow temporary assignment as between positions and to allow the assignment of one regularly assigned employe to fill the vacancy of another regularly assigned vacationing employe."

To the same effect, see Awards 18327 (Criswell), 17789 (Quinn), 17222 (Jones), 10957 (Dolnick), 17226 (Devine) and 9556 (Bernstein), among others.

Additionally, this Board has held repeatedly that Carrier is acting within its Management prerogatives when it seeks to avoid overtime pay without violating the Agreement. We so hold here.

See Awards 6686 and 7082 (Whiting), 7783 (Lynch), 13365 (Moore), 17158 (Brown), and P.L.B. No. 1186, Award No. 40, among others.

Moreover, under facts similar to those which prevail here, Carrier's action has been ruled proper and in compliance with the collective bargaining Agreement when it temporarily assigned a regular employe to work a position other than the one to which he was regularly assigned. Particularly is this true, as stated above, in situations involving vacation and where Carrier's purpose is to avoid unnecessary overtime.

See Awards 10299 (Bonebrake), 11576 (Hall), 13912 (Wolf), 14227 (Schmertz), 17064 (Dugan), 18455 (Rosenbloom), and 18623 (Rimer), among many others.

Carrier's position is further supported by the precise "freedom of assignment" language contained in the special "Ratio-of-Rates" Agreement, dated April 9, 1973, entered into between the same principals and on this property, the pertinent language of which reads as follows:

"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 positions or the use of incumbents of lower-rated positions to perform work otherwise performed by higher-rated positions."

The purpose of this provision is clear and unambiguous. In exchange for a revised superior rate structure, the parties agreed that Carrier was to have complete freedom in assignment of work subject to the conditions set forth in the above quoted language. Moreover, we have confirmed the latter conclusion in prior Awards of this Board.

See, for example, Award 14036 (Elkouri - 1st Div.); as well as S.B.A. No. 171, Case No. 3; and S.B.A. 336, Case No. 3 and Case No. 4.

Petitioner on its part also cites many prior Awards, but these are for the most part not germane to the issues here involved or relate to entirely dissimilar factual situations.

Thus, for example, Awards 8411, 18120 and S.B.A. No. 171, Award No. 30, relate to blanking a position of a seven day workweek or reducing a seven day workweek to five days. Such issues are not before us here. Awards 2695, 2853, 3417, 4352, 4499, 4500 and 4646 involve interpretation of a Rule not before us relating to "suspension of regular work to absorb overtime." Additionally, these Awards were superseded by Article VI of the National Vacation Agreement of 1971.

The various other Awards cited by Petitioner deal with (1) violation of the Scope Rule and the use of outside forces in violation of the Agreement, and (2) the question of proper damages. These issues are not part of our concern in the case at hand. Finally, Award 8841 deals with Rule 10(b) of the Vacation Agreement on assignment of vacationer's work "to two or more employes". That issue is not before us here.

Accordingly, in view of all of the above findings and based on the controlling precedents cited above, we find no basis in this record upon which to conclude that Carrier violated any rules or any agreement. We will therefore deny 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 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: C. W. Pauley
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.