

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21073
Docket Number CL-20901

Irwin M. Lieberman, Referee

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

PARTIES TO DISPUTE: (

(Western Maryland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7650)
that:

1. Carrier violated the rules of the Clerks' Agreement when it improperly used an employee junior to G.B. Hook to perform service at York, Pennsylvania and that

2. G. B. Hook shall now be allowed eight (8) hours' pay at the punitive rate of \$4.4300 per hour for November 13, December 2, December 30, 1972.

OPINION OF BOARD: Claimant, although more senior than the employee used, was not called to fill the position of Demurrage Clerk on the various Saturday claim dates specified.

Carrier, admitting that a more junior employee was used, claims that Petitioner was not qualified to fill the position in question since the Saturday duties are more varied than on week days and there normally is no supervision on Saturdays. Rule 43, and particularly Section 4 is applicable to this dispute; the Rule provides:

"FILLING OVERTIME VACANCIES

When extra employees are unavailable at the pro rata rate and it is necessary to fill a vacancy on overtime basis, employees will be called for the overtime work in the following order:

1. The regular incumbent of the position requiring overtime.
2. The regular relief employee assigned to the position requiring overtime. Relief employees are available on their rest days only and have rights for call on any position which they cover during their five day work week assignment. When more than one relief employee is available on the same day, seniority will govern.
3. The first-out qualified extra board employee.
4. If the position cannot be filled by the foregoing, available qualified employees in the office where the vacancy occurs will be offered the position in seniority order if not working their own position during the same hours as the position requiring overtime.

5. When a qualified employe cannot be secured to fill the vacancy as outlined above, the office force may be rearranged to the extent necessary to secure a qualified employe.

The foregoing is not applicable to daily overtime which is continuous with a tour of duty, nor does it prevent the use of furloughed employes to perform extra and relief work as provided in Rule 22."

Carrier also argues that Petitioner has not met its burden of proof in this dispute. On the property Carrier also raised the points that Claimant made no effort to qualify himself for Saturday work and further that the complaint was filed some fifty days after the first vacancy. Carrier argues that it has the sole prerogative to determine whether the employe is qualified for a position, unless its judgement can be shown to have been arbitrary and capricious, which has not been done in this case.

Petitioner states that not only was Claimant the senior employe involved but the Saturday work was the same work he performed throughout his regular work week and he was obviously qualified to perform on Saturdays. Furthermore, Petitioner argues that the record of Claimant's service with Carrier demonstrates that he is amply qualified to work alone on Saturdays; twenty two years seniority and fifteen years work on the two largest one-man agencies on the property.

Both parties submitted new evidence and arguments in their submissions to this Board. Such material will not be considered in accordance with long established practice and awards of this Board.

The record of the handling of this dispute on the property indicates some confusion on the part of Carrier as to the precise position being considered: there is substantial reference to rating and a rate clerk's duties, which are not at issue in this matter. Nor is there any relevance to Claimant's ability (or lack of same) with respect to any other position than that under consideration herein.

The record indicates that Claimant's regular position, for which he was admittedly qualified, had the following basic duties, as described in Bulletin No. 20, dated July 11, 1972:

"Be familiar with and execute demurrage rules and regulations; prepare demurrage report, interchange reports, transit statements; receive and sign bills of lading; waybilling when necessary; operate typewriters; and general office work."

The Superintendent's Findings, in a document dated April 27, 1973, described the duties which were to be performed on Saturdays by the clerk's position in question as follows:

"Receipting bills of lading
Supervising piggyback operation
Waybilling
Switching waybills
Interchange reports
Constructive placement notices
Notification of customers as required
Telephone and handling of unusual requests."

With respect to Carrier's comments on the property, the Claim herein, although fifty days after the first vacancy, was timely under the Agreement. Further, there is no Rule requirement cited which requires qualifying for Saturday work. An examination of the functions described by the Superintendent, above, does not support the contention that the Saturday duties were considerably more varied than those during the week; there are only a few additional functions which were not specifically described as part of Claimant's regular responsibilities. Furthermore, it is clear from the record that Claimant has functioned independently, as on the Saturdays in question, when he operated one man agencies. On balance, as the record indicates, the Carrier's decision that Claimant was not qualified to perform the clerk's duties on Saturdays seems arbitrary and capricious - and not warranted by the facts. Our conclusion, therefore, is that the Claim must be sustained.

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;

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

That the Agreement was violated.

Award Number 21073
Docket Number CL-20901

Page 4

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *G.W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1976.