

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21235
Docket Number CL-21190

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-7810, that:

1. Carrier violated the Agreement between the parties when they arbitrarily reduced the work week of D. W. Garman by denying him work on October 26 and 27, 1973.

2. Carrier shall pay claimant two (2) days' pay.

OPINION OF BOARD: Claimant was regularly assigned to Position No. 363 with rest days of Sunday and Monday. On October 25, 1973, he was advised that he was the successful bidder on a janitor position with Saturday and Sunday designated as rest days. Claimant states that he was ordered not to report to Position 363 on October 26 and 27; but to report to his new position on October 29. As a result, Claimant lost pay for two days and he submits this claim asserting a violation of Rule 42:

"RULE 42 - WORKWEEK

"Nothing herein shall be construed as permitting the reduction of days for regularly assigned employees and/or positions below five per week except that this number may be reduced in a week in which one of the specified holidays, as listed in Rule 40(a), occurs within the days constituting the assignment and/or position to the extent of such holiday, or unless agreed to by the Management and the General Chairman."

On the property, Carrier conceded the basic facts alleged by the employee, but stated that when he was advised that he was the successful applicant for the new position; the previous position no longer belonged to him and it was advertised as a vacancy, and thus, he could not work it on the two claim dates.

In its presentation to this Board, Carrier cites Rule 12(a):

RULE 12 - BULLETINING NEW
POSITIONS OR VACANCIES

(a) Except as otherwise provided in this rule, all new positions and vacancies (except those of thirty calendar days or less duration) will be promptly bulletined for a period of five working days in the seniority district affected as specified in Rule 2, bulletin to show position, location, assigned hours, meal period, days, assigned rest days, rate of pay and primary duties.

Employees desiring such new positions or vacancies will file their written application with the official designated on the bulletin and furnish a copy of the application to the Local Chairman within the specified time and assignment will be made within five working days thereafter. The name of the successful applicant will immediately thereafter be posted where the new position or vacancy is bulletined. An employee awarded a bulletined position will be transferred to such assignment within five working days after issuance of assignment bulletin or paid the rate of the position held or the position awarded whichever is the greater. (The five-day bulletin period may be changed when agreed to locally.)

NOTE: When necessary for an employee to mail copy of application to the Local Chairman, it shall be sent U.S. Mail.

and asserts that compliance with the cited rule caused the result which led to this claim. Moreover, Carrier notes that it also complied with Rule 11 concerning Position 363:

"When an employee bids for and is awarded a bulletined position, his former position will be bulletined or abolished in accordance with the rules of this agreement."

and it asserts that during the advertising period, Position 363 was filled by extra employees.

Carrier also notes that the reason Claimant could not commence the new assignment on October 26, 1973 was due to the fact that he worked his old position from 11:45 p.m. on October 25th through 7:45 a.m. on October 26; whereas the shift starting time for the new position was 6:00 a.m. on the 26th.

Certainly, we agree with the number of Awards cited by Carrier which preclude this Board from re-writing the rules of Agreements, or injecting our "predilections as to what is fair, just and equitable." But, a sustaining Award here does violence to none of the Awards cited by Carrier.

Surely, it is necessary to consider all rules when an action is taken, and when that action is under review and scrutiny by this Board. Basically, Rule 42 does not permit a reduction of days for regularly assigned employees and/or positions below five per week. In order to permit the results herein, we require a clear showing that some other provision of the Agreement dictates such result, and we are unable to find such a showing. On the property, there was reference to a "practice here at Bellevue" concerning re-advertising former positions, but we do not find mandatory contractual language. In short, we find nothing to suggest that Carrier could not have complied with the Agreement requirements concerning the filling of Position 363 in an orderly fashion, and at the same time, permit Claimant to continue working in such a manner so as to avoid the loss of two days' pay. We do not feel that said result rewrites the Agreement in any manner, but rather, it gives effect to the Agreement considered as a whole.

Although the issues are not precisely the same, we feel that the results herein are consistent with Award 19622. We do not view Award 17550 as being pertinent to this case.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1976.