

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21338  
Docket Number CL-21138

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7806) that:

1. The Carrier violated the Clerks' Agreement when it failed and refused to allow Mr. R. Clevenger time and one-half for service performed outside his regular assigned hours on September 10, 11, 12 and 13, 1973.

2. Mr. R. Clevenger shall now be allowed the difference between straight time rate and time and one-half rate for service performed on the aforementioned dates.

OPINION OF BOARD: The facts of record in this case reflect significant conflict; however, in the main the conflict results from error which the parties have corrected or clarified in their Rebuttal Briefs. Without reciting the specific conflicts, it suffices to say that a careful study of the record reflects the statement of facts which now follows.

The facts concerning the schedules of the Claimant's regular position and the position of Timekeeper are pertinent. The Claimant was regularly assigned to the position of IBM Machine Operator No. 4, Pontiac, Michigan, 3:00 P.M. to 11:00 P.M., Sunday through Thursday with Friday and Saturday rest days. The Timekeeper position had hours of 8:00 A.M. to 4:30 P.M., Monday through Friday with rest days of Saturday and Sunday. The Claimant worked on the Timekeeper's position on the dates of September 3 through 9, 1973. On Monday, September 10, 1973, a short vacancy arose on the Timekeeper's position and the position was advertised as a temporary position for 90 days or less. The Claimant worked the Timekeeper's position on September 10, 11, 12 and 13, 1973, and the claim relates to these dates. He also worked the position on September 14, but no claim therefor is presented as he received premium pay for this date. He was called from the seniority list on each of the days of September 10-13; and on each day he accepted the call and worked the Timekeeper's position. Because of the overlap in the schedules of the Claimant's regular position and the Timekeeper's position, the Claimant did not work his regular position of Machine Operator from September 10 through 14. The Organization states without contradiction that the Claimant was the only qualified available Employee who could perform timekeeper duties on the dates of September 10-14.

The Organization contends that under Rules 44 and 45, the Claimant is entitled to premium pay for September 10, 11, 12, and 13, 1973, because the 8:00 A.M. Timekeeper's position was not continuous with his regular work period and also was in advance of his regular 3:00 P.M. starting time as Machine Operator No. 4. (No claim is made in regard to the Claimant's work as Timekeeper during September 3 - 9, 1973.) The Carrier contends that Rule 44 is inapplicable because its provision for a minimum reporting pay of two hours indicates that it was not intended to apply to the filling of a complete eight hour vacancy, and that Rule 45 is inapplicable because it only comes into play where an Employee performs service in advance of his regular work period and in addition to his regular work period. (Carrier's emphasis). The Carrier further contends that premium pay is not in order because the Claimant was handled properly under the short vacancy provisions of Rules 5, 12, and 15(c), and because he made a voluntary move from his regular assignment to the Timekeeper's position under Rule 51(b) and (c).

The aforementioned Rules in pertinent part read as follows:

"RULE 44 - Notified or Called

Employees notified or called to perform service not continuous with the regular work period will be allowed a minimum of two (2) hours at time and one-half for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed thereafter on the minute basis."

"RULE 45 - Service Performed in Advance of Work Period

Rule 44 of this agreement will also apply to employees ordered to report for duty in advance of regular starting time for all time worked in advance of regular assignment."

"RULE 5 - Promotion, Assignments and Displacements

Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.

NOTE: The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

"RULE 12 - Short Vacancies

(a) New positions or vacancies of thirty (30) calendar days or less duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the thirty (30) day limit, they shall be immediately bulletined as provided in Rule 10.

(b) New employees or employees from other seniority districts or rosters filling positions or vacancies which have not been bulletined will not be considered as establishing seniority under Rule 3.

(c) When filling positions pending assignment by bulletin and when filling short vacancies, employees will be selected in accordance with the Rule 5 and Rule 15(c)."

"RULE 15(c) - Reducing Forces

When forces are increased or vacancies occur, furloughed employees shall be returned and required to return to service in the order of their seniority rights, except as otherwise provided in this rule. Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancies, and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces. When a bulletined new position, or vacancy, is not filled by an employee in service senior to a furloughed employee who has protected his seniority as provided in this rule, the senior furloughed employee will be called to fill the position. Furloughed employees failing to return to service within seven (7) days after being notified (by mail or telegram sent to the last address given) or give satisfactory reason for not doing so will be considered out of service."

"RULE 51 - Overtime

(a) Except as otherwise provided in these rules, time in excess of eight hours exclusive of meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half.

(b) Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by

"an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 48.

(c) Employees worked on more than five days in any work week shall be paid one and one-half times the basic straight time rate for work on sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another or to or from an extra or furloughed list, or where days off are being accumulated under paragraph (g) of Rule 50."

Rules 5, 12, and 15(c) contain no language on the question of whether pro rata or premium pay is applicable in this case and consequently, these Rules do not negate the claim. In like vein the provisions of 51(b) and (c) do not support a finding that the Claimant performed the duties of the Timekeeper's position in the course of voluntarily moving from one assignment to another. These provisions, Rule 51(c) and (b), speak on the subject of overtime work in excess of forty (40) hours in any work week or more than five (5) days in any work week; however, since the instant claim is not based on more than forty (40) hours or five (5) days in any work week, the provisions' exclusion of premium pay in respect to "an employee moving from one assignment to another" cannot be applied to the confronting facts. Similarly, it is insignificant that no claim for premium pay was made for the Claimant's performance of timekeeper duties during September 3-9. However, it is significant that on September 10, the Timekeeper position was bulletined for bids to be received on September 15; because the bulletin manifested a short vacancy from September 10 through September 15, which is incompatible with the Carrier's argument that the short vacancy on the Timekeeper's position consisted of short vacancies of eight (8) hours each on each of the claim dates. On the other hand, most of the Organization's contentions are supported by the record. The facts of record clearly show that the Claimant was called to fill the vacancy on the Timekeeper's position on each of the claim dates, that he did work the vacancy, and that such work prevented him from working his regular position because of the conflicting schedules of the two positions. In these circumstances there can be no doubt that the Claimant's work on the Timekeeper's position comes within the provision of Rule 44 which refers to "Employees... called to perform service not continuous with the regular work period." Indeed, this fact is spelled out in a Carrier letter of March 15, 1974 in which it is stated that: "... The short vacancies... were not continuous with his regular work period." (Carrier's emphasis).

In Third Division Award No. 16563, a "Notified or Called" rule identical to the herein Rule 44 was held to support a claim in which the facts were essentially the same as the herein facts. There, the claimant

who had marked off his regular first shift assignment was called to fill a third shift assignment. Although the Carrier contended, as here, that the Claimant had not worked in excess of eight (8) hours on the claim date or more than forty (40) hours that week, and although the Claimant had been called to perform the work off a list to which he voluntarily subscribed his name (a "Willing Workers List"), the claim for premium pay was held to be valid under the "Notified or Called" rule. Award No. 16563 is sufficiently analogous to the herein facts and issues to be given precedential effect in the confronting dispute and based thereon, the claim will 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 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:

  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1976.