

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21660  
Docket Number CL-21454

Robert W. Smedley, 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-7994, that:

1. Carrier violated the Agreement between the parties when on November 29, 1974, Clerk K. Fick was required to suspend work on his regular assigned position of Transit Biller and used to perform the duties of the Cashier position, regularly assigned to A. E. Szczopaniuk, who was on vacation, for the purpose or having the effect of absorbing overtime.

2. Carrier further violated the Agreement when Claimant's regular assignment was blanked on the date of claim.

3. Carrier shall now pay Claimant one (1) eight (8) hour pro rata day.

OPINION OF BOARD: Claimant in this case was regularly assigned to a position of Billing and Utility Clerk at Carrier's freight station at Buffalo, New York. On the date in question, the incumbent of the Cashier's position at the Buffalo freight station was on vacation. Claimant was utilized to fill the Cashier's position and was compensated at the higher Cashier's rate for the entire tour of duty. The resulting vacancy on the Billing and Utility Clerk position was not filled.

Petitioner, in presenting and handling this case on the property, only alleged a violation of Rule 36 - Absorbing Overtime. When presenting the case to the Board, petitioner also alleged a violation of Rule 42 - Workweek.

Inasmuch as no allegation or argument was had on the property relative to a violation of Rule 42, we make no ruling on that issue.

Concerning the alleged violation of Rule 36 - Absorbing Overtime, the issue is well settled. When vacation vacancies are being filled, it is not a violation of the Absorbing Overtime Rule to assign a regularly assigned employee to fill the vacancy of the regularly assigned vacationing employee. The record in this case shows that claimant was paid the higher rate of pay as required by Article 10 of the National Vacation Agreement. There was no violation of Rule 36 in this instance. See Award No. 17189 (Brown) among others.

We will, therefore, deny this 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*W. Paul*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.

