

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21684
Docket Number CL-21518

David C. Randles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8084) that:

1. Carrier violated the Clerks' Rules Agreement, and in particular Rules 3 and 9, when it denied Mr. D. H. Johnson's request to re-arrange in force to the 7:00 A.M., PICL Clerk position at Memphis, Tennessee, beginning November 25, 1974 (Carrier's file 205-4971).

2. Carrier shall now be required to compensate Mr. Johnson eight hours' pay at pro rata rate for November 25, 26, 27, 28 and 29, 1974; and eight hours' pay at punitive rate for the holidays of November 28 and 29, 1974, total amount being \$345.12, as outlined in letter of claim dated December 7, 1974, (Employees' Exhibit No. 3).

OPINION OF BOARD: Claimant, Clerk D. H. Johnson, held a regular assignment as Disposition Clerk, Memphis, Tennessee. Beginning Monday, November 25, 1974, the regularly assigned incumbent of position PICL Clerk at Memphis assigned to work the same workweek and workday as claimant was absent on scheduled vacation.

On Friday, November 22, 1974, claimant made a request to rearrange to position of PICL Clerk during the absence of the vacationing employe pursuant to Rule 9 (b), which provides:

"Until an agreement is reached establishing an extra board, temporary positions and vacancies which Carrier elects to fill will be filled by rearrangement of the regular forces, provided employe(s) have so requested same in writing, copy to the Division Chairman, giving senior employes their preference. The senior employe unassigned on that roster will be called to fill the vacancy left after re-arrangement of the regular force under the provisions of Rule 14 if Carrier elects to fill same."

Clerk Johnson's request was denied on November 22, 1974:

"Account of others on vacation, and account of having no one available to fill your vacancy on disposition job, your request to rearrange on 7AM picl. Clerk job November 25th is hereby declined."

The Organization alleges that Rules 9 and 3 (Seniority) of the Agreement were violated when claimant was not permitted to rearrange as requested in that Clerk Morison was available and qualified to work claimant's position, had he been permitted to rearrange.

The Carrier declined the claim on the basis that no one was available to work claimant's position had he been permitted to rearrange. Furthermore, the Carrier asserts if, in fact, claimant was allowed to rearrange, a punitive rate would have been paid to other employees who would have done claimant's work. That set of circumstances is barred by Rule 9 (d):

"In the application of Paragraph (b) of this Rule requiring rearrangement of the regular forces, it is not intended that employees will be permitted to utilize same as a vehicle to obtain more than five (5) eight (8) hour pro rata days in a work week."

The Carrier subsequently assigned extra clerks to fill the position of PICL. Said clerks had less seniority than the claimant.

The key to making a determination in this matter is relative to whether or not Clerk Morison was or was not available to fill the position of the claimant. The Organization contends that she was available and the Carrier contends that she was not available. Each of the parties to this dispute actively produced new material supporting their opposing positions.

This Board recognizes the right of claimant to occupy the position requested as an exercise of his seniority; however, the burden of proof rests with the Organization. It was the Organization's responsibility to prove on the property that Clerk Morison or other qualified clerks were available to fill claimant's position had he rearranged. The Organization met the burden of proof by supplying a statement from Clerk Morison dated December 6, 1974:

"TO WHOM IT MAY CONCERN:

During the period of November 25, 1974 thru November 29, 1974, I was a furloughed employee working from the Clerks' Extra List

"at Memphis, Tennessee and was available to work the position of 8:00a.m. to 5:00p.m. Disposition Clerk beginning on November 25, 1974. I was not assigned to any Vacation Relief Position during the above period.

/s/ Mrs. Betty J. Morison"

This Board believes that the Organization met its burden of proof and that the Agreement was violated.

Claimant requests that if it is found that the Agreement was violated, he should be compensated as follows:

"Carrier shall now be required to compensate Mr. Johnson eight hours' pay at pro rata rate for November 25, 26, 27, 28, and 29, 1974; and eight hours' pay at punitive rate for the holidays of November 28 and 29, 1974, total amount being \$345.12, as outlined in letter of claim dated December 7, 1974."

To allow this part of the claim would afford claimant a wind-fall. In fact, claimant lost no wages as a result of the violation of the Agreement. Actually, the position to which he wished to rearrange had a lower rate. It is the opinion of the Board, based upon many of its prior awards, that no compensation shall be made to the claimant.

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.

A W A R D

The Claim is sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1977.