

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21820
Docket Number CL-21649

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8114) that:

1) Carrier violated the Clerks' Rules Agreement on January 26, February 2 and February 9, 1975, when it failed to utilize the regular employe to perform work required on the aforementioned Sundays, which normally performs five days per week.

2) Carrier shall now be required to compensate employe R. A. Fountaine for five hours 20 minutes (5'20") at the penalty rate of Position #2120 on January 26, February 2 and February 9, 1975.

OPINION OF BOARD: Claimant was classified as a Reconsigning Clerk holding position 2120 at the Carrier's Bensenville, Illinois, yard at the time of the incident leading to this dispute. His regularly assigned workdays were Monday through Friday with Saturdays and Sundays as regularly assigned rest days.

Since occupying this position in March of 1973 and up to January, 1975, it had been the practice of the Claimant to work Sundays (although the record does not specify that he worked each Sunday) at the request of management, for the purpose of sending out constructive placement notices. The basis for such work (performed at premium rate) was to permit the Claimant to do such work (i.e., sending out constructive placement notices) which could be done at times and under conditions not directly related to the exigencies of his regular work hours.

It is unrefuted that the Claimant, when necessary, performed the preparation and dispatching of constructive placement notices; it is equally unrefuted that others at the Carrier's facility did the same or similar work on an as-needed basis.

Beginning in January, 1975, the Carrier assigned the task of issuing constructive placement notices on Sundays to another employee (occupying position 0444) within the craft, at a lesser rate of pay and at the straight-time rate. The employee's regular work location was separate from that of the Claimant, although apparently within the same overall facility. In order for this employee to perform this work on Sunday, he necessarily came to the Claimant's work location and work station. It was unrefuted, however, that this employee also issued constructive placement notices, when necessary, as part of his duties. Nothing was present in the record as to the regular work schedule of this employee but it seems apparent that it included Sunday as a regular workday, since the employee was working at a straight-time rate.

The Union contends that a reading of the appropriate Rule supports its claim:

"RULE 28 - WORK ON UNASSIGNED DAYS

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

"Regular employee" in Rule 28 - in this case the Claimant - the Union asserts, had consistently performed the work of constructive placement as an integral part of his duties, including performing such work on one of his regular days off (Sunday) over an extended period. Whether or not such work was performed elsewhere and by others is not germane to this case, the Union contends; what is important is that the Claimant's work of constructive placements at his own work location is reserved to him.

The Carrier, on the other hand, contends that the Union must show that the Claimant performed constructive placements to the exclusion of other employees in order to establish the Claimant's rights as set out in this case, a condition which the Carrier asserts does not exist here. The Carrier also contends that constructive placements are incidental work for a number of positions, not the principal duties of any, and that issuing constructive placement notices has never been bulletined as a principal duty.

This case is yet another in a long series over the proper interpretation of the "unassigned day" rule, in this instance Rule 28.

Past awards have dealt with numerous variations of the "unassigned day rule"--supervisors performing such protected work, other crafts performing such work, other members of the same craft performing such work for the first time on their regular rest days when such work had not previously been performed, etc. In this case, the occupant of position 0444 (Moellenbrink) was apparently performing duties on one of his regular work days, Sunday, at a different location, but in the same general work area. According to the Carrier, this employee also prepared and issued constructive placement notices as part of, though possibly incidental to, his regular duties.

The central issue here, thus, is whether the Carrier violated the Claimant's rights by permitting another employee, on a regular day of work to perform constructive placements at the Claimant's duty station. Rule 28 states: "Where work is required by the Carrier to be performed on a day which is not part of any assignment..."; the employee occupying position 0444 was apparently not performing duties out of his work jurisdiction when he performed the constructive placements; what was different was the locale of such work. That the Carrier altered the means of accomplishing such Sunday work is obvious as well as the purpose for such alteration--economics. There is nothing to indicate that the Carrier was other than entitled to do so. While its method of accomplishing such work (i.e., permitting one employee whose work station was elsewhere to operate from another's) may raise questions of discretion, nothing has been produced to make such actions violative of the Agreement.

The Union's contentions are not found to have merit.

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

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The Agreement was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *Al W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 16th day December 1977.

