

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21878  
Docket Number CL-21344

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
(  
(The Pittsburgh and Lake Erie  
( Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7910, that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, particularly Rules 28 and 8, when it used a junior regularly assigned employe to work Job C in the Centralized Agency, Pittsburgh, Pennsylvania, on the dates of May 9 and 10, 1974.

(b) The Carrier be required to compensate Clerk B. B. Buerkle for eight hours at the punitive rate of Job C in the Centralized Agency, Pittsburgh, Pennsylvania, for the dates of May 9 and 10, 1974.

OPINION OF BOARD: Clerk Michalski was assigned to a position on the extra list that began on a Monday. The previous week he bid on an assignment and was successful. The new assignment's work week began on Saturday with rest days Thursday and Friday. Clerk Michalski worked on the extra assignment Monday through Friday and commenced his new assignment on Saturday.

The Organization contends that under a January 26, 1954 letter agreement Clerk Michalski's new position in regularly assigned status was effective Thursday, and that Claimant should have been called to work that Thursday and Friday.

The pertinent portion of the January 26, 1954 letter agreement reads:

"Assignment of the successful applicant will be made in sufficient time to become effective the next Thursday on which day the next succeeding bulletin will be posted, except, that during weeks in which a holiday falls on Tuesday, Wednesday or Thursday, assignment will be made and bulletin posted on Friday."  
(Underscoring added.)

Carrier contends that it was proper to place Clerk Michalski on the position to which he bid on the first day of the work week of that position, and that was on Saturday.

Both parties agree that the issue is whether Clerk Michalski was properly used as an extra employe to fill vacancies on Thursday and Friday, or whether he was improperly used as a regularly assigned employe thus depriving Claimant, a senior regularly assigned employe, of rest day service.

Carrier takes the position that Michalski, even though he had bid for "and been assigned to a regular position effective Thursday, May 9, the first of the two consecutive relief days of that position... the work week rule does not permit a work week to be started on the rest days of an assignment, therefore, Clerk Michalski could not be actually assigned to the regular position until Saturday, May 11." That being the case, Carrier argues, "Clerk Michalski retained his status as an extra employe whose work week began on Monday, May 6, and having worked only three days in that work week, and it was incumbent on the Carrier to call Clerk Michalski from the extra list to fill the vacancies in question on May 9 and 10 at straight time rate of pay."

It is clear from this record that Clerk Michalski's status changed from an extra employe to a regularly assigned employe on Thursday, May 9. As of that time he was junior to Claimant, and Claimant was entitled to the work.

To hold otherwise would completely disregard the provisions of the January 26, 1954 letter agreement. By so holding, the Board is not making any judgement on the merits, if any, that Clerk Michalski might have had if he had not been allowed to work.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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 31st day of January 1978.