

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21887

Docket Number CL-21363

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8007, that:

1. The Carrier violated the Clerks' Agreement by failing and refusing to fill the position of IBM Keypunch 410 as prescribed in Rule 24 of the Clerks' Agreement.

2. That Mrs. A. Schmidt be compensated for eight (8) hours at the punitive rate of IBM Keypunch, or \$42.60, December 30, 1974.

OPINION OF BOARD: On Monday, December 30, 1974 Mrs. B. K. Norris was off work due to illness and was compensated for sick leave under Rule 48. Mrs. Norris is regularly assigned to keypunch position #418, hours 7:00 a.m. to 3:00 p.m., rest days Thursday and Friday. Claimant Mrs. A. Schmidt is regularly assigned to keypunch position #429, hours 11:00 p.m. to 7:00 a.m., rest days Saturday and Sunday. With Mrs. Norris off sick, Carrier elected to blank job #418 on December 30, 1974 and the job did not work that day. On December 30, 1974 Mrs. Schmidt filed the instant time claim for eight hours, alleging that Carrier violated the Agreement by blanking the job and should have called her to work instead. On the property the Organization contended that Carrier violated Rule 24 of the Agreement and the dispute is focused on that provision of the contract.

The question narrows to whether Rule 24 expressly prohibits management from exercising discretion in blanking or filling a position when the incumbent lays off sick. The Organization seizes on the phrase "will be filled" in Paragraphs (a) and (b) of the Rule as mandating Carrier to fill the positions of laid off employees and prohibiting blanking. In support of this view the Organization cites Awards 7255, 10849 and 16532 while rejecting Award 21443 as "palpably erroneous". Carrier cites Award 21443 for the proposition that Paragraph (1) of the Rule negatives any mandatory effect of Paragraphs (a) and (b) if, arguendo, they are mandatory and not merely directory, and argues that

there is no express limitation on blanking in Rule 24 and rejects Award 10849 as "palpably erroneous."

We have studied the contested language and read all of the cited Awards. We conclude that there is no express prohibition on blanking in Rule 24. As we read that rule it sets forth the procedures for filling temporary vacancies but cannot be construed as imposing an obligation on the Carrier to fill the vacancy. See Awards 10888, 12358, 14252, 14696, 17434, 17704, 17950, et al. We find Award 10849 unpersuasive and Award 7255 distinguishable on the facts. Award 16532 deals with different contract language than that before us herein. As for Award 21443, we come out at the same place but we cannot travel the same circuitous semantic route. We see no point in focusing on supposed exculpatory language in Paragraph (1) since no preclusion of blanking is imposed by Paragraphs (a) and (b) in the first place. Since there was no express prohibition on blanking job #418, Carrier was free to exercise reasonable management discretion. We find in the facts before us no evidence that the discretion was abused. The claim must be denied.

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:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1978.