NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22051
THIRD DIVISION Docket Number CL-21767

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Western Railroad Association

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8218) that:

(a) The Western Railroad Association violated and continues to violate the current Clerks' Agreement when on June 9, 1975 they omitted senior employe Robert Barratt from a list of employes who were to work overtime.

(b) That Claimant Robert Barratt now be compensated for all time lost account of being omitted from the overtime list. Which would amount to 16 hours per week beginning the week of June 9, 1975 and continuing until this claim is settled.

OPINION OF BOARD: The Association announced a special overtime program in its Tariff Department for the purpose of converting manual tariff on a computerized format. Sixteen employes were selected for this project, thus obtaining preference to regular and repeated overtime work. Thirteen other employes, including the Claimant, were selected as "alternates" for the program, meaning that their overtime work on the project would depend on whether or not the "regular" 16 employes were available as required.

The Organization argues that Claimant, with greater seniority than a number of those regularly assigned, should have been selected in place of one of the 16 employes.

On a procedural point, the Association argues that the Board should dismiss the claim since, as presented to the Board, it is "categorically different" from the claim filed, handled and discussed on the property.

As presented to the Board, the claim differs somewhat in form but not in substance from the manner presented on the property. In both instances, the Organization alleges violation of the Agreement by the

Association's failure to include the Claimant among those regularly assigned to overtime. In the earlier instance, the claim is for an indefinite amount of pay for lost overtime, while the latter instance specifies a claim for 16 hours a week.

The intent of the claim was clear at the outset and remained so throughout its handling: compensation for overtime opportunity lost due to the failure of the Association to place the Claimant among the 16 regularly assigned employes. On this basis, the claim is properly before the Board for resolution.

As to the merits of the case, the Association claims that the selection of the 16 employes was based on their experience and knowledge in the specialized area of conversion of tariffs to the particular requirements of the computerization program. The Association took the position that the Claimant, and others, did not have the experience and that his utilization as one of those regularly assigned to the program (to be completed on both regular time and overtime) would impair the efficiency of the work.

The Organization showed that the Claimant was regularly assigned to tariff work and was acquainted with some phases of the program in question. The Board finds, however, that it was not demonstrated that the Claimant had the background and experience involved in the work to any substantial degree.

In its allegation of Agreement violation, the Organization relies on Rule 23 (e), which reads as follows:

> "In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary, shall be given preference. The same principle shall apply to working extra time on holidays."

This rule is notably lacking in any reference to seniority. It is a requirement that preferential treatment be given to "employes regularly assigned to [the] class of work." The 16 employes assigned by the Association were all in this category. As Rule 23 (e) is literally stated, the Association cannot be found in violation.

The Organization claims, however, that implementation of Rule 23 (e) implies seniority preference. To win acceptance of this position, something other than the bare bones of Rule 23 (e) must be

found. "Past practice" -- to the degree that some or most previous overtime assignments included seniority preference -- cannot require the insertion of words or meaning into an otherwise clear and directly stated rule.

Rule 23 (e) is distinguishable from that involved in some other Awards sustaining claims for overtime work. For example, in Awards No. 7091 (Whiting) and Award 7092 (Whiting) and others similar, the applicable rule specifically refers to "senior qualified employes." In Award No. 5635 (Wyckoff) and others similar, the appropriate rule calls for assignment "in accordance with seniority, fitness and ability."

Two other rules should be considered in this connection:

Rule 2 (e) provides in part:

> "Seniority rights of employes covered by these rules may be exercised only in cases of vacancies, new positions or reductions of forces, except as otherwise provided in this Agreement."

Since Rule 23 (e) does not "otherwise provide," it would appear that the Agreement does not include overtime as a seniority right.

Rule 4 -- Promotions, Assignments, and Vacancies -- provides:

> "(a) Employes covered by these rules shall be in line for promotion. Promotions, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail.
>
> (b) The word 'sufficient' is intended to more clearly establish the right of the senior employe to a new position or vacancy where two or more employes have adequate fitness and ability."

Some argument may be made that the overtime in question is to be considered an "assignment," although the ex parte submissions of neither the Association nor the Organization explored this application of "assignment." Assuming, for the sake of discussion, that "assignment" appropriately applies to the computerization program, the rule does not rely on seniority alone, but seniority in conjunction with fitness and ability. Upon examination of the record, the Board finds that the selection of the 16 employes was based on their "sufficient . . . ability,"

while the Claimant, by his lack of familiarity and experience with the specialized type of information required, did not have "sufficient . . . ability" to warrant his selection solely on the basis of his seniority. This refers to the particular work involved, something considerably narrower than the general "class of work" in which the employes are normally involved.

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;

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. Paulk
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.