NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22102
THIRD DIVISION Docket Number CL-21947

Dana E. Eischen, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8333, that:

1. The Carrier violated the effective Clerks' Agreement when it failed to properly compensate the employes listed in Part 2 hereof for eight hours' pay at the time and one-half rate of their regular assignments when they were assigned to perform extra work and/or fill short vacancies on positions with a lesser rate of pay than their own.

2. The Carrier shall now compensate the following named employes for the difference between the rate of pay at time and one-half of their respective regular assignments and the rate of pay at time and one-half of the position to which temporarily assigned, for each of the dates indicated below:

Date	Claimant	Regular Assignment	Position Worked	Difference Claimed
3/19/76	M. Miller	394	230	$ 4.20
3/26/76	M. Miller	394	230	4.20
3/28/76	H. Weber	349	230	4.20
3/14/76	B. Blacklaw	385	230	4.20
3/1/76	S. Wojcik	202	337	12.45
3/3/76	S. Wojcik	202	201	4.41
3/13/76	S. Wojcik	202	East Yd. Extra	12.45
3/15/76	S. Wojcik	202	East Yd. Extra	12.45
3/20/76	S. Wojcik	202	East Yd. Extra	12.45
3/27/76	S. Wojcik	202	334	12.45
2/7/76	A. Walton	201	345	3.84
3/11/76	A. Walton	201	363 Extra	3.84
3/13/76	A. Walton	201	363	3.84
3/14/76	A. Walton	201	363 Extra	3.84
3/21/76	A. Walton	201	363 Extra	3.84
3/20/76	A. Walton	201	363	3.84
3/26/76	A. Walton	201	363	3.84

OPINION OF BOARD: The facts behind this claim are not in dispute. On each of the claim dates the named Claimant worked on tours of duty outside his regular assignment - either on his rest day or else during a second tour of duty in a twenty-four hour period. In each case the Claimants were compensated at the time and one-half rate but at the pay rate of the position filled. Claimants allege that they should have been paid at the rate of their own regular position and claim that in refusing to do so Carrier violates Rules 57 and 73 of the controlling Agreement which read as follows:

"RULE 57 - PRESERVATION OF RATES

Employes temporarily or permanently assigned to higher-rated positions shall receive the higher rates while occupying such position; employes temporarily assigned to lower-rated positions shall not have their rates reduced.

A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employe. Assisting a higher-rated employe due to a temporary increase in the volume of work does not constitute a temporary assignment."

"RULE 73 - DATE EFFECTIVE AND CHANGES

(a) This Agreement shall be effective March 1, 1964, superseding all other rules, agreements and understandings in conflict herewith, and shall continue in effect until changed as provided herein or in accordance with the Railway Labor Act, as amended.

(b) Should either of the parties to this Agreement desire to revise or modify these rules, thirty (30) days written advance notice containing the proposed changes shall be given and conference shall be held immediately on the expiration of such notice unless another date is mutually agreed upon."

The Organization herein relies upon the express language of Rule 57 and contends that it unambiguously requires Carrier to pay employes who voluntarily accept a temporary assignment the rate of their regular position. Carrier maintains that the language itself is not crystal clear on this point, that an interpretation of the same language in Award 8898 between these same parties settled the point in 1959 and that controlling practice both before and after Award 8898 favors its position. In rejoinder the Organization asserts that Award 8898 was in error, that in any event the conditions which led to special arrangements on the property no longer obtain and that the practice prevailing both before and after Award 8898 is abrogated by Rule 73.

We have studied Award 8898 and cannot find that it is patently erroneous on its face, notwithstanding that there can be found contrary awards. (Indeed, if that were the test for repudiation very few awards in this industry would survive more than a season, since unfortunately both sides have in the past retried supposedly settled issues seeking, and too often finding, divergent decisions.) At least where the parties and the contract language at issue are the same, there is substantial value in the stability and predictability of putting an end to litigation by invoking the principles of stare decisis and res judicata. In this particular case we have the added element of acquiescence and adoption of Award 8898 and its interpretation of Rule 57 (then Rule 55 but otherwise in haec verba) where employes voluntarily fill temporary assignments. Since that Award was issued there have been numerous renegotiations of the contract language yet it remains unchanged. Moreover, so far as our record shows, Award 8898 was not subjected to arbitral challenge from the time of its issuance to the filing of the instant claim some 17 years later; yet it has been enforced and the Rule applied consistently during the entire intervening period. We note additionally that even since the adoption of Rule 73 there has been some 12 years of uniform practice of construing and applying Rule 57 in the manner decided by Award 8898.

It should be noted that the element of voluntarism by the employes was central to the interpretation rendered in Award 8898 and is also of controlling importance in this case. The question of application to volunteers is the only point upon which Rule 57 arguably is ambiguous and is the point of departure for recourse to the unvarying practice as an aid in determining the intent of the parties. If the language was clear and unambiguous on the question

of its application to volunteers then the Organization would be correct in its assertion that practice, even of long standing, cannot vary and contradict the plain language of the contract. But such is not the case and the mutual, uniform and lengthy past practice therefore is dispositive of this case.

Based upon all of the foregoing we find no merit in the instant claims and they 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 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.