

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22184

Docket Number CL-22039

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Bangor and Aroostook Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
(GL-8336), that:

(1) The Carrier violated the Agreement between the parties when it assigned employees from its Operating Section Clerical Roster, General Office, Hermon, Maine, to fill a vacancy and perform work on the Clerk position, Shop Superintendent's Office, Derby, Maine, covered by and reserved to employees on its Mechanical Department Seniority Roster, on August 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21 and 22; October 20, 21, 22, 23, 24, 27, 28, 29, 30, 31 and November 3 and 15, 1975.

(2) Claimant Clarence A. Hamilton, shall be compensated for eight (8) hours for each date specified at the daily rate of pay for said work.

OPINION OF BOARD: In this case we have a situation in which two (2) separate claims were initiated on the property - the first covering the period August 4 to 22, 1975 and the second covering the period October 20 to November 15, 1975. At all levels of progression on the property these two items were identified as separate claims with no reference having been made to the period of time involved between August 22, 1975 and October 20, 1975. When petitioner docketed these claims with this Board, they elected to combine them into one subject and alleged that the vacancy in question was a continuous one which stemmed from an off-duty injury to Clerk Rowell at Derby, Maine. Petitioner alleged that: "While Clerk Rowell's absence throughout was a result of the injury, on the dates not claimed his position was not filled or was filled by a furloughed transportation clerk which Carrier was privileged to do under existing rules." (Underscore ours)

We have reviewed the record diligently and have been unable to find any probative evidence to support the allegation that Clerk Rowell was continuously absent from his assignment from August 4, 1975 to November 15, 1975. Petitioner simply has not met the burden of proof

which is theirs to meet relative to the assertion that the vacancy was a continuous one all directly caused by the off-duty injury. Assertions are not proof. Rather we can only conclude from this record that there were two (2) separate vacancies, one of which involved the Memorandum of Agreement dated October 24, 1972 dealing with sick leave (August 4 to 22, 1975), and the second vacancy which involved the provisions of the National Vacation Agreement of December 17, 1941, as amended (October 20 to November 15, 1975).

When we examine the fact situation involved in this case we find that claimant was regularly assigned to a position of Clerk at Carrier's Diesel Shop at Northern Maine Junction, 7:00 A.M. to 3:30 P.M.; rest days Saturday and Sunday. Clerk Rowell was regularly assigned at Carrier's Shops at Derby, Maine, located approximately 50 highway miles from Northern Maine Junction. His assignment worked 7:00 A.M. to 4:00 P.M. with rest days of Saturday and Sunday.

Petitioner's position in both instances is grounded on the theory that Claimant Hamilton should have been used to fill the vacancies in question because "he is the senior employe on the Mechanical Department Seniority Roster," and the work "should have been performed by employes holding seniority on the Mechanical Department Seniority Roster on overtime basis rather than by using employes from another seniority roster." (Underscore ours)

Carrier, on the other hand, argues that the clear language of both the "Sick Leave" Agreement and Article 6 of the Vacation Agreement as interpreted by Referee Morse permits the use of other regularly assigned employes as was done in this instance.

Addendum #2 of the Rules Agreement deals with Sick Leave. Paragraph (h) thereof reads as follows:

"(h) The Carrier has the option to fill or blank the position of an employee who is absent on account of his personal sickness. If the Carrier elects to fill such vacancy, rules of Agreements applicable thereto will apply. The right of the Carrier to use other scope employees on duty to perform the duties of the position of the employee who is absent on account of illness or compassionate leave is recognized by the parties." (Underscore ours)

In our opinion the Carrier in this instance was merely exercising its managerial prerogative under the last sentence of this paragraph (h), "\* \* \*, to use other scope employees on duty to perform the duties of the position of the employee who is absent on account of illness\* \* \*," when it used Clark Varney - who is fully covered by the Scope of the Rules Agreement - during the period August 4 to 22, 1975. No violation accrues as a result of such use.

In the interpretation of Article 6 of the National Vacation Agreement, Referee Morse stated:

"(2) The term 'vacation relief workers' is not used in a technical sense....The term also includes those regular employees who may be called upon to move from their job to the vacationer's job for that period of time during which the employee is on vacation."  
(Underscore ours)

Again, it is our opinion that under the specific provisions of Article 6, as interpreted by Referee Morse, Carrier was within its rights in using Chief Clerk Grinnel - who also is fully covered by the Scope of the Rules Agreement - to cover the vacation period in question.

We do not feel that petitioner has shown a specific contractual obligation which requires the result it seeks. In order to reach that result through an interpretation of a number of sections we must and have considered the agreement as a whole, and we find a failure of proof that the parties intended the result sought. We must, therefore, deny the claims as presented.

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

Award Number 22184  
Docket Number CL-22039

Page 4

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. Paulose*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.

