

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22186
Docket Number CL-22077

David P. Twomey, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GI-8359) that:

(1) Carrier violated the Agreement between the parties when on June 24 and 25, 1974, it diverted J. F. Spangler from his regular assigned relief position (3:00 PM to 11:00 PM, Block Operator Clerk, Tontogany, Ohio) to first trick Agent-Block Operator (7:00 AM to 3:00 PM), Tontogany, Ohio, and failed to compensate him in accordance with Agreement Rules, and

(2) Carrier shall, as a result, compensate J. F. Spangler an additional eight (8) hours' pay (\$41.37) for each date, June 24 and 25, 1974.

OPINION OF BOARD: The arguments and counter arguments which exist in this case make it difficult to determine precisely what is being sought. Initially there was a claim asking that Carrier "compensate J. F. Spangler \$40.73 for both June 24 and June 25, 1974, total claim of \$81.46, for working out of assigned job". Then we find reference to a demand that "employee Spangler is entitled to either \$40.73 more for the two (2) days worked outside assigned hours, or should be paid at time and one-half (\$62.06) for both days". Finally, the subject listed with this Board asks that Carrier "compensate J. F. Spangler an additional eight (8) hours' pay (\$41.37) for each date."

The daily rate of claimant's regular assigned Block Operator position was \$40.73.

The daily rate of the Agent-Block Operator position on which he was used was \$41.37.

Claimant was allowed the time and one-half rate based on \$41.37 (\$62.06) for each of the two (2) days in question.

The recurring theme in this dispute seems to center around Rule 24 - Short Vacancies Not Requiring Bulletin, and, in particular, Notes (a) and (b) thereto. Rule 24 reads as follows:

"Rule 24

"Short Vacancies Not Requiring Bulletin.

(a) Vacancies of less than thirty (30) calendar days' duration, positions of vacationing employees regardless of duration and positions under bulletin pending assignment, will be filled in the following manner and sequence:

- (1) First--by the senior regularly assigned employee who has filed written request with designated officer, with copy to Local Chairman, (not less than twenty-four (24) hours prior to the starting time of desired position(s)) (vacancies), subject to the following:
 - (a-1) In moving from his regular assignment to a temporary vacancy, from one temporary vacancy to another, or back to his regular assignment, no employee may start a second tour of duty on the same calendar day, nor may an employee move on assigned rest days.
 - (a-2) After moving to a temporary vacancy, an employee must hold same for its duration unless called for another vacancy for which registered, or unless displaced.
 - (a-3) While holding a temporary vacancy an employee will assume all of its conditions, the same as if regularly assigned thereto.
 - (a-4) Regularly assigned employees who move to temporary vacancies under the provisions of this paragraph (1) are entitled to the rate of pay attached thereto.

- "(a-5) Absent employees (who have filed proper written request prior to such absence) may claim a vacancy if request is made within six (6) days after return from absence and if such vacancy began while the employee was absent.
- (a-6) Employees who have filed proper written request shall fill vacancies when called in accordance with this paragraph (1), but may withdraw such requests, in writing, prior to being called.
- (a-7) Overtime rate is not payable for work in excess of forty (40) hours per week when such excess hours are obtained due to moving under the above provisions.
- (a-8) Employees whose positions are abolished, or who are displaced as a result, may exercise displacement rights onto positions, (vacant or occupied) whether or not of "short" duration, and prior written request is not required.
- (2) Second--by an extra employee available at pro rata rate, as provided in Rule 25 or, if no such extra employee is available, by a furloughed employee under the provisions of Article IV of the August 21, 1954 Agreement.
- (3) Third--by the senior employee desiring to fill the vacancy at overtime rate under the provisions of Rule 26.

NOTE: (a) The parties agree that an employee may be held off or removed from his assigned position to work a vacancy under emergency conditions when such vacancy cannot be filled in any other manner. The involved employee is entitled to his regular rate, or the rate of the vacancy, whichever is higher, with a minimum of eight (8) hours, and penalty rate for all hours worked outside of his regularly assigned hours.

(b) An employee held off or removed from his regular position and required to fill a vacancy other than as outlined in the first sentence of paragraph (a) of this note is entitled to a minimum of eight (8) hours' pay at pro rata rate for each position.

"Understanding to Rule 24.

The parties agree that regularly assigned employees shall be granted opportunity to move to short vacancies prior to the filling of the vacancies by extra employees under the provisions of Rule 25, and the filling of vacancies at penalty rate under Rule 26 is the last recourse. Management has the right, and the obligation, to fill short vacancies under the terms of this Agreement at pro rata rate prior to the filling of vacancies at penalty rate."

The parties here involved have carefully and judiciously set forth an agreed-upon, detailed procedure for filling vacancies of less than thirty (30) calendar days' duration. Notes (a) and (b) are a part of that agreed-upon procedure. As we read Note (a), the parties have agreed that under certain "emergency conditions" employees will be entitled to the higher rate of pay, will be entitled to a minimum of eight hours pay and will be paid at the higher time and one-half rate "for all hours when they are worked outside of their regularly assigned hours" to fill a vacancy covered by this Rule. Under Note (b), as we read it, the parties have agreed that in nonemergency situations, employees who are moved from their regular positions to fill a vacancy covered by this Rule will be paid "a minimum of eight (8) hours' pay at pro rata rate for each position." (Underscore ours)

Therefore, the question to be decided in this case is whether claimant was used on the two (2) day vacancy in question in accordance with the provisions of Note (a) or Note (b).

The term "emergency conditions" has been applied in unique ways in this industry. In this situation, however, the parties have described what they mean by the term. When Rule 24 is read in its totality, we can only conclude that the "emergency conditions" which are referred to therein exist "when such vacancy cannot be filled in any other manner." At the initial handling of this claim on the property the parties argued as to whether or not claimant was properly paid under Note (a) or Note (b). Carrier alleged, and petitioner has not effectively refuted that this vacancy could not be "filled in any other manner" as provided in Rule 24. It is apparent, therefore, that the referred-to "emergency conditions" existed, and that claimant was used to fill the vacancy in accordance with the provisions of Note (a).

Because claimant has already been paid at the higher penalty rate (\$62.06) for each date, there is nothing more for this Board to decide.

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. Pauls
Executive Secretary

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

