

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22686
Docket Number CL-22570

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Detroit & Toledo Shore Line
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8618) that:

1. The Carrier violated the effective Clerks' Agreement when on various dates in September and October, 1977, which are set forth below, it required and/or permitted Clerk Judy Blake to suspend the duties of her regular position to absorb overtime by filling vacant positions pending assignment by bulletin;

2. Carrier shall now compensate the following named claimants for eight (8) hours' pay at the time and one-half rate of a Rate Clerk's position for each of the dates specified.

- (a) Clerk Al Williams - September 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 20, 21, 24, 25 and 26, 1977;
- (b) Clerk James Howe - September 29 and 30, 1977;
- (c) Clerk Debi Wisniewski - October 1 and 2, 1977.

OPINION OF BOARD: Initially, we are confronted with jurisdictional and procedural threshold issues which must be addressed in this case. Both parties contend that the other failed to meet in conference on the property, as required by the Railway Labor Act and Circular No. 1 of this Board. Additionally, Petitioner alleges that the initial claims - as presented - were not properly denied.

Concerning the initial issue, our review of the record compels us to conclude that a conference was, in fact, held on the property. But certainly, there is no question that the conference was, to say the least, brief and perfunctory. Thus, although it might be arguable that

the parties failed to fulfill the spirit of the law, it is our opinion that they did comply with the letter of the law.

Concerning the second issue, we would certainly hope to find a more substantial compliance, but we conclude that the denial letters to the initial claims in this case just barely meet the minimum requirements of Rule 25.

We will, accordingly, consider this claim on its merits, but we are inclined to suggest to both parties that their treatment of the areas here in question came dangerously close to being fatal. While it is not our role to pontificate, nonetheless, we remind the parties that minimal handling of these important matters may place otherwise valid arguments in jeopardy of being ignored if procedural questions dictate the result.

This dispute deals with the use of an incumbent of a relief assignment to fill vacancies on regular assignments which are under advertisement pending award. This position is - and has been for some time - a clerical one which has a programmed assignment to provide regular relief service on one (1) work day and has a make-work fill-in schedule for the remaining four (4) work days of the work week. But, the record shows that the incumbent has, as an accepted practice, been used to fill day-to-day vacancies on the other regular assignments caused by vacations, sickness, voluntary absences, and the like.

Petitioner has failed to provide us with even a minimum showing which would compel us to draw a distinction between the use of this employe to fill day-to-day vacancies vis-a-vis the filling of advertised vacancies. We are left with no alternative but to conclude that, in fact, no distinction exists. The claims as presented 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 Employee involved in this dispute are respectively Carrier and Employee 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

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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 14th day of December 1979.