

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22750

Docket Number CL-22406

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8523) that:

1. The Carrier violated the Agreement between the parties when it arbitrarily removed extra clerk V. Bowen from position No. 31 prior to the termination of the temporary vacancy on position No. 31.

2. Carrier shall now compensate clerical employee, V. Bowen, for eight hours' pay at the pro rata rate of position No. 31 for the date of June 22, 1976.

3. Carrier violated the Agreement between the parties when on each date of July 6, 7, 8, 9, 12, 13 and 14, 1976, it removed extra list clerk, V. Bowen, from position No. 31 prior to the expiration of the temporary vacancy on that position.

4. Carrier shall now be required to compensate extra list clerk, V. Bowen, for eight hours' pay at the pro rata rate of position No. 31 for each date of July 6, 7, 8, 9, 12, 13 and 14, 1976.

OPINION OF BOARD: As senior man on the extra list claimant was properly called on May 17, 1976 to fill a temporary vacancy in Position No. 31. On the claim dates the Carrier utilized claimant on positions other than No. 31 which action the Organization alleges breaches Rules 21(c) and 36½(h) which read as follows:

"Rule 21(c) REDUCING FORCE When forces are increased or vacancies occur, employees on the extra list shall be returned and required to return to service in the order of their seniority rights, except as otherwise provided in this rule. Such employees who have not worked on five days in their work week, shall be given preference on seniority basis to all extra or temporary work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by Bulletin which are not filled by rearrangement of regular forces.

"Extra list employees failing to return to service within seven days after being notified (by mail or telegram sent to the last address given) or give satisfactory reason for not doing so will be considered out of service."

"Rule 36½(h) REST DAYS OF EXTRA OR FURLOUGHED EMPLOYEES  
To the extent extra or furloughed employees may be utilized under applicable agreements or practices, their days off need not be consecutive, however, if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment."

The record of the handling on the property reveals that the claim was progressed solely on the basis of a violation of the aforequoted rules.

To be a breach of rule 36½(h) the claimant must have been assigned rest days other than those of the position to which he had been assigned, i.e., Saturday and Sunday. Such is not the case in the instant matter and hence no violation of rule 36½(h) is found.

The action of the Carrier that is complained of is the assigning of claimant to positions other than that to which he was originally assigned. It is important to note that this is not a claim of an extra man asserting that he should have been called to fill one of the vacant positions on which claimant was used. Under the claims submitted to this Board in this matter we do not reach that issue.

We have read the entire rule 21 carefully and are unable to find language in that rule that prohibits the Carrier from utilizing the services of the claimant as was done here. Absent such a prohibition the Carrier cannot be found to be in violation of the Agreement insofar as the claims herein are 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 respectfully Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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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 29th day of February 1980.