

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22883
Docket Number CL-22700

John J. Mangan, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8638) that:

1. The Carrier violated the Clerks' Agreement at Lewiston, Idaho, when it arbitrarily removed Claimants J. M. Kress and A. E. Kress from their regularly-assigned Steno-Claim Clerk positions and required Claimants to work the Window Clerk position of a vacationing employee.

2. Carrier shall now be required to compensate J. M. Kress, Steno-Claim Clerk, one (1) hour's pay at straight time rate from 7:00 a.m. to 8:00 a.m., and one (1) hour's pay at the rate of time and one-half from 4:00 p.m. to 5:00 p.m. during period of May 2 through 10, 1977, inclusive.

3. Carrier shall also be required to compensate A. E. Kress, Steno-Claim Clerk, one (1) hour's pay at straight time rate from 7:00 a.m. to 8:00 a.m., and one (1) hour's pay at the rate of time and one-half from 4:00 p.m. to 5:00 p.m., during period of June 6 through 10, 1977, inclusive.

OPINION OF BOARD: Claimants, J. M. Kress and A. E. Kress, were regularly employed by the Carrier as Steno-Claim Clerks at Lewiston, Idaho. Their regular working hours were from 7:00 a.m. to 4:00 p.m., Monday through Friday.

The Claimants assert the following:

1. The Carrier violated the Clerks' Agreement when it arbitrarily removed them from their regularly assigned positions and required them to work the Window Car Clerk position of a vacationing employee whose working hours were from 8:00 a.m. to 5:00 p.m. The two periods occurred when this employee was on vacation from May 2nd to May 6, 1977 and from June 6th through June 10, 1977, inclusive.

2. The Carrier instructed each Claimant to suspend work on his assigned Steno-Claim Clerk position during each period and assume the Window Car Clerk position. Both Claimants objected in writing to the transfers. Their objections were overruled and they reported for work from 8:00 a.m. to 5:00 p.m.

3. As a consequence of the Carrier's instructions, each Claimant was required to report for work one (1) hour after his regular 7:00 a.m. starting time and, in addition, required to remain on duty one (1) hour after his regular 4:00 p.m. quitting time.

4. The parties have adopted a special rule - the Note to Rule 15 - which governs their conduct in filling positions of employees absent on vacation.

The Note to Rule 15 provides:

"When the position of an employee granted a vacation is to be filled and a vacation relief employee is not utilized, such position will be filled in accordance with the provisions of this Rule 15."

5. The parties to this dispute, by agreement, have specifically indicated how they want vacation vacancies filled. By adopting this special note, the parties have said that they do not want to be governed by general procedures for filling vacation absences as set forth in a National Vacation Agreement covering several crafts and organizations. They have also said that they do not want to be governed by any other provisions of the rules that may generally touch on the subject. They have specifically agreed how they want such vacancies handled.

6. Carrier elected to fill the vacation vacancy, and a vacation relief employee was not utilized by the Carrier; therefore, the vacancy had to be filled under the provisions of Rule 15(b), which makes the provisions to fill short vacancies in the following manner:

"may be filled by a regular assigned employee who requests such short vacancy or bulletined position, or may be filled by a qualified, available employee out of service because of force reduction."

7. Instead of doing either of the above, the Carrier diverted Claimants from their own jobs to work the Window Car Clerk vacation vacancy.

8. Rule 51 provides for the preservation of rates for employees temporarily assigned.

9. The Note to Rule 15 supersedes Rule 51, since it speaks specifically of vacation vacancies.

10. The Claimants cited Referee Edgett's Award in No. 21451 and stated Referee Edgett's remarks could easily be interpolated to cover Rule 15.

11. During this period, J. M. Moriarity, a former employee of the Carrier, was on furlough. He had previously worked on the Window Car position and had experience to fill the position. They also state that furloughed employee, L. M. Gash, was also available; that management had, prior to this dispute, designated four furloughed (extra) clerks, in addition to Mr. Moriarity, to fill vacancies on the Window Car Clerk position without benefit of working it prior or even breaking them in.

12. Under an emergency, the Carrier may require an employee to fill in on a short vacancy in the absence of the regularly assigned employee, but this was not the case, as there was no emergency, because the Carrier had advance knowledge of the two vacation periods in this dispute; that vacations on the Carrier are assigned prior to the commencement of the new year; that this means that the Carrier had approximately six months to hire the necessary force to meet its requirements; that the vacation of the incumbent could be deferred until a substitute was found; that furloughed L. M. Gash was assigned to fill in for the Claimants during the periods they were assigned to the Window Car Clerk position; he could have filled in at the Window Car Clerk position.

13. The claims seek reparation for straight time for the first hour of each shift that Claimants were not permitted to work their own job, i.e., the time from 7:00 a.m. to 8:00 a.m. each claim date. They also seek an hour's pay at time and one-half for the hour each day that Claimants were required to remain on the job after their normal quitting time (4:00 p.m. to 5:00 p.m.).

The Carrier contends that this case involved the filling of vacation vacancies when there were no qualified extra-furloughed employees available; that even if it had, in the past, used unqualified employees to perform whatever portions of the position they may have been capable

of performing, by doing so, Carrier would not thereby forfeit its right to require a qualified employee to fill the position at a later date. This is a managerial prerogative that has never been relinquished under any terms of the applicable contract.

The Carrier admitted that Mr. Moriarity, a former employee was on furlough and that he had previously worked on the Window Car Clerk position, but stated that he was not qualified; that the rules provide and the Organization acknowledges the Carrier's right to require qualifications.

The Carrier argued that Rule 15 is permissive and clearly does not preclude the use of a regular employee when no one requests to fill the vacancy and there is no qualified furloughed employee that can be used; that Rule 51 provides for the preservation of rates for employees temporarily assigned. Rule 51 states in part:

"Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower-rated positions shall not have their rates reduced."

The Carrier contends further that it has complied with all the requirements of the Agreements between the Carrier and the Organization in making the assignments of the Claimants; that Claimants lost no income and are not entitled to the additional compensation claimed; that they were properly assigned to the Window Car Clerk position and assumed all the attributes of that position.

The various citations submitted by the Carrier are not exactly in point with this dispute because the specific situation described in the "Note" appended to Rule 15 did not exist in those cases.

Under the rules of the Agreement between the Carrier and the Organization, it is clearly established that the Carrier has the right, within bounds, to determine whether an employee was qualified to fill a vacancy.

The burden is on the Carrier to initiate the process of selection and training of vacation reliefs to meet its needs. This is a privilege and prerogative of management. The Carrier failed to meet its burden in this instance by failing to properly prepare for the vacation vacancy involved here. The Record discloses that inexperienced personnel had been assigned to fill the position of Window Car Clerk in

other years. Also available was furloughed employee Moriarity.

This Board has consistently held that in an instance where there is a conflict between the Vacation Agreement and the Rules Agreement, the terms and conditions of the Rules Agreement control until such time as that Agreement is modified or changed by the parties thereto. In other words, a special rule prevails over a general rule. The Record shows that the Agreement has not been so modified. In view, thereof, we find the claims must be sustained. The compensation sought is reasonable. (See Awards 22019 and 21451).

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 Carrier has violated the Agreement.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.