

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22919
Docket Number CL-22913

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8842)
that:

(a) The Pacific Fruit Express Company violated the current clerks' Agreement when it instructed the Agent-Clerk at Eugene, Oregon, Mr. K. C. Wilson to work the Agent-Clerk position at Medford, Oregon, effective March 1, 1978, notwithstanding the availability at Medford of a qualified unassigned employee, Mr. James A. Brummett;

(b) The Pacific Fruit Express Company shall now be required to allow James A. Brummett eight (8) hours compensation at the pro rata rate of Position K-1, Agent-Clerk, Medford, Oregon, for March 1, 1978, and each and every calendar day thereafter until the violation is corrected;

(c) In addition, James A. Brummett shall be accorded protected status as provided by Section 8, paragraph (e), of the Agreement of January 17, 1978.

OPINION OF BOARD: In our review of this case, we find that Carrier violated Agreement Rules 6, 7, 9(i) and 13(c) respectively when it reestablished the Agent-Clerk position at Medford, Oregon on March 1, 1978 and required Mr. K. G. Wilson to travel from Eugene, Oregon to Medford, a distance of approximately 187 miles to perform the duties of the new position. Claimant had been the occupant of the position K-1 Agent-Clerk at Medford until it was abolished on January 9, 1978 and, as an unassigned employee, was subject to call for that position, consistent with the terms of the aforementioned Rules. When Carrier established this position again at this location, it was obligated to call Claimant. We understand Carrier's argument that the degree of economic activity at Medford didn't warrant the establishment of the Agent-Clerk position, particularly during the March 1 - March 16, 1978 period, when only eleven (11) carloads of pears and thirteen (13) carloads of rosebushes were loaded, but Mr. Wilson's actual work schedule didn't show that it was a limited time assignment.



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Rule 6 required Carrier to call Claimant to fill the position and asserting that it was only a redeployment of existing personnel because of short term economic exigencies doesn't change the realistic effect. It was a de facto reestablishment of the former K-1 Agent-Clerk's position and as such violative of the intended letter and spirit of the cited Agreement Rules.

On the other hand, while we agree with Claimant that the amended claim relative to protective status first advanced in the General Chairman's May 24, 1978 letter was technically validated when Carrier didn't challenge its presumptive impropriety when responding on June 27, 1978, we find that we cannot ascertain the interpretative significance and application of Section 8(e) of the January 17, 1978 split off agreement since a copy of this agreement was not submitted to the Board. The record, however, substantially demonstrates that the collective bargaining agreement was violated when Carrier directed Mr. K. G. Wilson to perform Agent-Clerk duties at Medford from March 1 through April 3, 1978 and we are compelled to sustain parts (a) and (b) of the instant claim for this period. We will dismiss part (c) of the claim for the reason stated herein.

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 violated to the extent expressed in the Opinion.

A W A R D

Claim sustained to the extent expressed herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary