

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23043
Docket Number CL-22995

Rodney E. Dennis, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks
{ Freight Handlers, Express and Station Employees
{ Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8816) that:

(1) Carrier violated Rules 3, 5, 6, 7, 16, 17, 23, 39(d), 49 and other rules of the effective Agreement when a furloughed employee from Seniority District No. 33 was utilized to fill short vacancies in Seniority District No. 32; depriving employees assigned in Seniority District No. 32 of overtime work opportunities.

(2) The following Claimants shall be compensated on each of the specified dates for 8 hours at the rate of time and one-half of the position for which time is claimed, or their regular rate of pay, whichever is higher:

C. Ginther	March 29, 1978
A. Green	March 30, 1978
R. Erickson	April 8, 1978
L. Staeden	April 13, 1978
J. Klempke	April 14, 1978
D. Mohs	April 15, 1978

(3) This is a continuing claim for eight (8) hours compensation at the rate of time and one-half of the position for which time is claimed, or their regular rate of pay, whichever is higher, for each and every date thereafter that the Carrier continues to violate the effective Agreement in a similar manner. Claimants shall be the senior available employee on the date of the violation and can be determined by a joint check of the Carrier's records.

OPINION OF BOARD: On March 29 and 30 and on April 8, 13, 14, and 15, 1978, Carrier assigned a furloughed protected employee from Seniority District 33 to fill short-term vacancies in Seniority District 32. This employee held no seniority rights in District 32. Six employees filed claims in which each requested pay at the punitive rate for one day, 8 hours, of lost overtime work. The claim progressed on the property and was denied at all levels. It is now before this Board for resolution.

The Organization argues that Carrier does not have a right to assign involuntarily a furloughed employee from Seniority District 33 to fill vacancies in Seniority District 32. Carrier must offer the available work to qualified employees holding seniority in District 32. There are no schedule rules that allow otherwise. The Organization also argues that the instant claim is a continuing one and that, as such, future incidents of the type shown here shall be included in an award. The Organization maintains that this dispute is properly before this Division and is not a dispute that should have been submitted to Special Board 605, as Carrier alleges.

Carrier argues that it does have a right to assign a furloughed protected employee to available short-term vacancies, as long as it is done in accordance with the seniority rules of the Agreement. It obtained this right from the February 7, 1965, National Agreement. Carrier claims that this dispute was handled in accordance with that Agreement and that it was in keeping with the appropriate seniority rules of the schedule Agreement pertaining to the filling of short vacancies specifically Rule 17. Carrier also asserts that no rule in the agreement specifies that employees must be offered overtime if a furloughed employee from another roster is available to fill the vacancy at straight time.

Carrier infers from Rule 3(c) (an inference it claims justifies its position) that it can involuntarily assign a furloughed protected employee to another seniority district without allowing that employee to accrue seniority in the second district, as would be necessary if a voluntary transfer took place. Finally, Carrier argues that the instant dispute is not properly before this Board, since it is a dispute over the February 7, 1965, Agreement. It should therefore have been processed under the procedure of Special Board of Adjustment No. 605.

After a careful review of the record, this Board is persuaded that the instant case does involve an interpretation of the February 7, 1965, Agreement, specifically the application of Article II, section three. Carrier is clearly basing its action on authority that it thinks it derives from that article. Whether it is right in this matter is not for this Board to decide. This claim is properly a claim that belongs under the procedures of Special Adjustment Board No. 605 and, as such, will be dismissed by this Board.

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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1980.