

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23056
Docket Number CL-22999

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-8813)
that:

1. Carrier violated the effective Clerks' Agreement when it failed to fill short vacancies in accordance therewith on November 16 and December 13, 1977;
2. Carrier shall now compensate Clerk Eileen M. Walker for eight (8) hours' pay at the pro rata rate of an Assistant Machine Operator position for November 16, 1977;
3. Carrier shall now compensate Clerks Frank J. Lane and Dolores J. Johnson for four (4) hours' pay each at the pro rata rate of a Machine Operator position for December 13, 1977.

OPINION OF BOARD: In this dispute claim (1) involves the absence of an employee who was off duty on account of illness on November 16, 1977 and claim (2) involves the absence of an employee who was off December 13, 1977, for the same reason. Carrier determined that another regularly assigned employee could perform any of the necessary work of the absented employees and argued that such assignments were consistent with the rules, agreements and practices governing the performance of work of employees absent from duty. It further asserted that it was not required to work employees on an overtime basis to perform.

Contra-wise, Claimants contended that said positions should have been filled on an overtime basis pursuant to the conditions and requirements of Agreement Rules 4 (day's work and overtime) and 7 (absorbing overtime).

In our review of this case, we concur with Carrier that Claimants failed to establish that it was contractually impermissible to assign this work to other employees in the same office. Rule 4 does not apply, since it sets forth the method for assigning overtime, but does not require that vacancies be filled through overtime for part of or all of a work shift when the work could be performed in another manner as per existing rules, agreements or practices and Rule 7

is inapplicable to the facts herein, since Claimants were not required to suspend work on their regular positions to perform work on other positions, which could have been performed on an overtime basis by the position's regular incumbent. We find no agreement provision or practice that estopps Carrier from assigning the work of an employee absent on account of illness, but under pay, to the remaining work force in the office and this is exactly what Carrier did in this instance. The record shows that the organization historically acquiesced to this practice as per the understanding of the Memorandum of Agreement, Case 1025, and that the Claimants failed to provide compelling and persuasive evidence that it was otherwise. In a companion case, dealing with the same organization and Carrier, and involving factually analogous circumstances, we held that petitioners failed to demonstrate that Agreement Rules 4 and 7 were applicable or that an observable practice required Carrier to assign this work on an overtime basis. (See Third Division Award No. 22921). We find this ruling foursquare on point with the facts herein and thus we must deny the claims.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

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