

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23299
Docket Number CL-23072

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8837) that:

1. Carrier violated the Agreement between the parties when on October 17, 1977, they refused to permit Mr. R. H. Lyons to fill a temporary vacancy in accordance with Rule 14.
2. Carrier shall now pay Mr. Lyons one pro rata day for each date of the claim (5).

OPINION OF BOARD: At the time this dispute arose, Claimant was assigned to work 11:45 P.M. to 7:45 A.M. as Relief Operator Clerk at the Bellevue Terminal. He was employed in Seniority District 53 with the same hours and rest days as the vacation position, which he applied to fill. He submitted a letter dated October 11, 1977 to the Assistant to Superintendent-Staff requesting that he protect the vacation vacancy of Clerk L. J. Leinbaugh on position H 359 Train Clerk from October 22, 1977 through October 26, 1977. On October 17, 1977, the aforesaid Carrier official, E. E. Englund, declined his request on the rationale and basis that Agreement Rule 14 permitted only regularly assigned employees who were assigned to the immediate office of the vacationing employee to apply for such positions. Claimant contested this interpretation and appealed Carrier's determination.

In our review of this case, we concur with Claimant's position. Careful analysis of Rule 14 does not require that an interested employee must work all five days in the immediate office of the vacationing employee. In fact, the word "immediate" in this context cannot be construed as being synonymous with the word "same". Claimant had worked in the same office as Clerk Leinbaugh for two days a week and was listed on the same seniority roster. On other days he was assigned to contiguous locations. He had the same rest days and starting time as the vacant position and as such complied with the Rule's qualifying prerequisites. There is no explicit requirement that an otherwise fully qualified employee must work in the exact office five days a week as the vacationing employee and for us to assert that it is,

would be an unwarranted extension of our authority. The language of Rule 14 when read in its entirety and discerned from its intent and practical application, does not support Carrier's position and we must conclude that the Agreement was violated. Claimant was not ineligible to apply for the vacation position.

On the other hand, we agree with Carrier that the monetary payment sought by Claimant is excessive and we will direct that he be paid the difference, if any, between what he earned and what he would have earned had he been permitted to work this position for the five days.

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.

A W A R D

Claim sustained to the extent expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.

