NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23510
THIRD DIVISION Docket Number CL-22465

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Illinois Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8561) that:

1. Carrier violated the Clerks' Rules Agreement when it forced and/or required S. R. Hagstrom to suspend work on his regular assignment of Operator-Clerk No. 917 (Relief) on March 14, 15, 16, 17 and 18, 1977, in order to work position of Operator-Clerk No. 914 which was a vacancy due to the regularly assigned occupant being on vacation.

2. Carrier shall now be required to compensate S. R. Hagstrom for eight (8) hours' pay at overtime rate for the above-named dates due to having been forced and/or required to suspend work on his regular assignment.

OPINION OF BOARD: Claimant contends that Carrier violated the Clerks' Rules Agreement, specifically Rules 35 and 37(a) when it required him to suspend work from his regular assignment of Operator Clerk No. 917 on March 14, 15, 16, 17, and 18, 1977 in order to work the position of Operator-Clerk No. 914 which was vacant due to the regularly assigned incumbent being on vacation.

Carrier disputes this contention and asserts that it assigned Claimant to fill this position in accordance with Article 12(b) of the National Vacation Agreement and appropriately compensated him pursuant to Articles 10(a) and 10(c) of the aforesaid Agreement. Both parties adduced numerous precedent Awards to buttress and substantiate their positions.

In reviewing this case, there are a number of interpretative considerations that we must carefully examine before proceeding to a comparative analysis of the key divisional Awards submitted vis this claim. When the applicable 1942 Morse interpretations to the National Agreement are evaluated, we find that Article 12(b) requires Carriers not to bulletin vacation positions for the purpose of filling same from the employes submitting applications and that an employe holding a regular position who is utilized to fill the position of the vacationing employe is governed by the provisions of existing rules agreements or recognized practices thereunder.

This was the labor organizations' contention which was upheld by Referee Morse. Specifically he stated:

> "On the basis of the theories of interpretation which the referee has applied to other articles of the agreement in the foregoing portions of the Award, it is clear that the Carriers' position on this question cannot be sustained. However, the referee believes that the parties should proceed without delay in accordance with Article 13 of the Agreement, to negotiate fair and reasonable adjustments of the blanking rules so far as their application to the vacation agreement is concerned."

In this dispute we are not confronted with an issue respecting a blanking situation but with a claim asserting that specific rules were violated.

Carrier, contrawise, argues that the Claimant as the junior qualified employe was properly assigned to the Operator-Clerk No. 914 position as per the requirements of Article 12(b) since it did not utilize a regular vacation relief employe and it observed strictly the seniority principle consistent with its prerogative to arrange the work force in the most efficient manner. (See Third Division Award 10957 on this point). Admittedly this is a persuasive argument by itself, but cannot overlook the relevancy of Rules 35 and 37(a) to this dispute, when we consider what Referee Morse had to say regarding specific rules that affect the Vacation Agreement provisions and our case law on analogous adjudicative questions. Referee Morse recognized that it was possible for future referees to be confronted with a problem involving a conflict between the Vacation Agreement and specific work rules and stated in pertinent part:

> "This referee held many conversations with representatives of the employees and of the Carriers, and as a result of those conversations, he knows it to be a fact that the parties reached the Washington settlement with the understanding that the vacation plan was to be subject to the Rules Agreements but that the parties would negotiate adjustments of any working rules in any existing agreements which in their application would produce results contrary to the purpose of the vacation plan."

We have no record that the parties negotiated any work rule adjustments to comply with this pragmatic admonition.

On the other hand, we have compiled a body of decisional law respecting Vacation Agreement disputes and we will review those holdings germane to the present issue.

In Third Division Award 20998, we sustained Carrier's position when it unilaterally removed a regular assigned employe from his regular position of Manifest Clerk to fill vacancies on the position of Assistant Chief Clerk. We noted the relationship of Article 6 of the National Vacation Agreement to Article 10(a) governing rates of pay in such situations and concluded that Carrier's position was further reenforced by the "precise freedom of assignment" language contained in the special "Ratio of Rates" Agreement agreed to by the parties on April 9, 1973. But in that Award, we were not confronted with a claim involving similar rules to those in the case now before us.

In Third Division Award 21614 which Carrier also avers is on point with this dispute, we reached a similar conclusion to our holding in Award 20998 but again on a set of facts that did not include similar rules.

In the instant case, Claimant charged that Carrier violated Rules 35 and 37(a) of the Working Agreement which are referenced hereinafter.

RULE 35 - GUARANTEE

> Regular assigned employe or employes being used to relieve regular assigned employes will receive one day's pay within each twenty-four (24) hours, according to position occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per position, except on rest days.

RULE 37 - REGULAR ASSIGNED EMPLOYES DIVERTED TO WORK ON OTHER THAN THEIR REGULAR POSITIONS

> (a) Regularly assigned employes will not be required to perform service on other than their regular positions except in emergencies. When they are required to perform service in an emergency on other than their regular positions, they will be paid at the time and one-half rate of the position they fill, but, not less than the daily compensation of their regular position.

When these rules are examined within the context of our decisional law dealing with both similar rules and factual situations, we have no judicial option other than to sustain the claim.

In Third Division Award 21578, which is analogous to this case, we held that:

> "....in the absence of any emergency as defined in the agreement, Carrier caused Claimant to be suspended from his regular position to perform relief work, a violation of the agreement, and would not thereafter permit him to work his own position because of the Federal Hours of Service Act."

In that case the issue dealt with a claim regarding the filling of a vacation vacancy by a regularly assigned employe in the absence of an emergency. Since there was no emergency present and the parties were governed by rules similar to Rules 35 and 37(a) herein, we found for petitioner. (See also Third Division Award 16492).

In summarizing our conclusion, we find our decision in Award 21578 dispositive of this dispute and not inconsistent with our holdings in the prior Third Division Awards reviewed such as 20998 and 21614.

In these other cases, we were not faced with claims involving provisions similar to Rules 35 and 37(a) and accordingly, we construed the pertinent articles of the National Vacation Agreement in a manner that best comported with the intended meaning of Referee Morse's interpretations and our decisional law. In Third Division Award 4626, we held in part that:

> "It was the clear intention of the parties to the Vacation Agreement that the existing rules as to working conditions were to continue unless changed by negotiations."

Rules 35 and 37(a) are explicit and unambiguous provisions and were previously interpreted by this Board to support Claimant's position. The parties have not defined vacation vacancies to be emergencies or outside the purview of these Rules and, upon the record then, we must conclude that the Agreement was violated. Inasmuch as Claimant did not receive the day's pay provided for his regular hours at his regularly assigned location and since he was improperly suspended from working these hours at his regular position, he is entitled to be paid for them at the pro rata rate.

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 Employes involved in this dispute are respectively Carrier and Employes 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 at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.