

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23562
Docket Number CL-23816

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9327) that:

1. Carrier violated the effective Clerks' Agreement when on May 14 and 21, 1979, it employed the services of outsiders, having no antecedent seniority and no employment relationship with the Carrier to perform work reserved exclusively to employees covered by the scope of the Agreement;

2. Carrier shall now compensate Clerk P. Trudeau for eight (8) hours' pay at the time and one-half rate of Position #25 for each of the above dates.

OPINION OF BOARD: On May 14 and May 21, 1979, the regular clerk assigned to position #25 in the General Superintendent's Office was off work due to illness. The Organization alleges that Carrier filled these vacancies with outsiders who were not employees of the railroad, in violation of the scope rule of the Schedule Agreement. The Organization therefore filed a grievance alleging that Clerk P. Trudeau should have been called to fill position #25 on both May 14 and May 21. It has requested that two days' pay at the time-and-one-half rate be awarded to Clerk Trudeau.

Carrier contends that position #25 was blanked on May 14, 1979, and that on May 21, 1979, it hired a temporary employee from an employment service only after it had attempted to fill the position from the clerk's seniority roster. Carrier argues that Claimant was scheduled to work the 3:00 p.m. to 11:00 p.m. shift on May 21, 1979, and that position #25 was an 8:00 a.m. to 4:30 p.m. position. Claimant could not have worked position #25 and still been available to fill her regular position. Therefore, she was not called. Carrier also argues that no other clerks on the roster were qualified to cover position #25 and no clerks were furloughed at the time. Since no clerks from the roster were available, Carrier went to an outside agency to obtain a temporary employee, as it had done many times in the past.

This Board has reviewed the record of this case and must conclude that Carrier had Schedule support for hiring a temporary employee under the facts of this case. The Agreement does not require Carrier to call an out-of-line employee in such a situation. In fact, the Memorandum of Agreement

of March 30, 1966, gives this Board further guidance on that point. It specifically states that an employee will not be regarded as available to fill a vacancy if his or her regular assignment would begin before the expiration of the eight hours after the starting time of the temporary vacancy.

Claimant's regular shift began at 3:00 p.m. Position #25 did not terminate until 4:30 p.m. This overlap disqualified Claimant as an applicant for the call. Carrier asserted that no other clerk from the roster was qualified or available to fill the position and the Organization did not refute this statement. Given the unavailability of a roster employee, Carrier had the right under Rule 10 of the Schedule Agreement to hire on a temporary basis an employee not covered by the agreement.

This Board can find no fault with Carrier's actions in this case.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

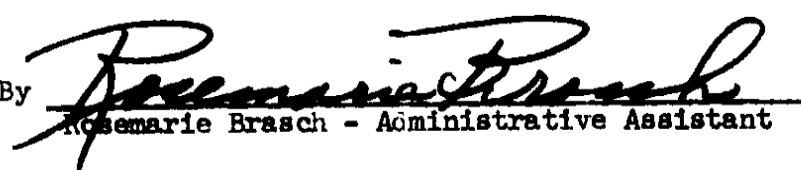
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

