

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24071  
Docket Number CL-23744

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
                                  { Freight Handlers, Express and Station Employees  
                                  { Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9274) that:

(1) Carrier violated the rules of the current Agreement between the parties, when on Sunday, March 25, 1979, it required Mr. R. L. Jacobs to suspend work on Second Chief Yard Clerk Position No. 4335 at 5:00 p.m. and work Telegrapher-Clerk Position No. 4374 at the same location, Ray Yard, Denison, Texas, from 5:00 p.m. to 12:00 MN, and then refused to allow him to work his regular assignment Monday, March 26, 1979.

(2) Carrier further violated the Rules of the current Agreement when it refused to compensate Mr. Jacobs for Monday, March 26, 1979, thereby reducing his work week below five (5) days per week.

(3) Carrier shall compensate Mr. R. L. Jacobs eight (8) hours' pay at the pro rata rate of his regular assigned position, Chief Clerk to Yardmaster Position No. 9087, for March 26, 1979.

OPINION OF BOARD: The facts in this case are not in dispute. At the time this claim arose, Claimant, R. L. Jacobs, was regularly assigned to the position of Chief Clerk to the Yardmaster at Ray Yard, Denison, Texas. That position is regularly scheduled to work five days, Monday through Friday, 7:00 A.M. to 3:00 P.M.

On Sunday, March 25, 1979 (his second rest day), Claimant was called to work at 3:00 P.M. to fill Position No. 4335. At 5:00 P.M. on that day, another vacancy occurred (Telegraph Clerk Position No. 4374) and Claimant was required to fill it until midnight of the 25th. \* Claimant's recall to work on March 25, 1979 was made pursuant to his seniority and in accordance with Section VII, A Addendum No. 1 of the Memorandum of Agreement between the parties.

Since Claimant was employed on his second rest day in Position No. 4374, he was not allowed to protect his regularly assigned position No. 9087 on Monday, March 26, 1979, account of the restrictions of the Federal Hours of Service Law. As a result, Claimant filed a claim seeking compensation of eight hours' pay at the pro rata rate for Position No. 9087 for March 26, 1979.

\* Carrier's brief (p. 7) lists the position as No. 4375, though documents attached indicate that position is No. 4374.

The Organization maintains that the Carrier violated Rule 48 and Rule 53 of the Rules Agreement when it refused to allow Claimant to protect his assignment on Monday, March 26, 1979. These rules provide:

"Rule 48 - ABSORBING OVERTIME

Employees will not be required to suspend work during regular hours to absorb overtime."

"Rule 53 - BASIS OF PAY

Nothing herein shall be construed to permit the reduction of days for employees covered by this rule below five (5) days per week (and the monthly rated positions listed in 'NOTE' to Rule 44. Work Week, below six (6) days per week) excepting that these numbers may be reduced in a week in which holidays occur by the number of such holidays."

The Organization maintains that Carrier's violation of these rules is clear. Since Claimant was not allowed to protect his assignment on Monday, March 26, 1979, his work week was reduced from five to four days for that week in violation of Rule 53. In addition, according to the Organization, the assignment of overtime to Claimant on March 25, 1979 caused the suspension of his regular work on the next day in violation of Rule 48.

Carrier, on the other hand, maintains that the Hours of Service Law prevented Claimant from protecting his assignment on Monday, March 26, 1979. It points out that the "Preamble" to Addendum No. 1 of the Memorandum of Agreement Covering the Performance of Extra and Vacation Relief Work states clearly that rules governing the performance of extra work "supersede and take precedence over any agreement rule with which they may conflict so far as extra and vacation relief work are concerned."

Furthermore, Carrier claims that its assignment of Claimant to essential duties on Sunday, March 25, 1979 was mandated by the Agreement. Since Claimant had to be assigned to Position No. 4374 on that day, and since that assignment prevented him from protecting his regular assignment on Monday, March 26, 1979, Carrier is placed "between the devil and the deep blue sea."

Where such a conflict exists, according to Carrier, the Federal Law must supersede and invalidate conflicting contractual provisions. Accordingly, Carrier asks that the claim be denied in its entirety.

It appears to this Board that the claim must be sustained. While both parties cite numerous awards to support their contentions, the simple fact remains that Carrier has created the dilemma in which it finds itself. It freely and voluntarily negotiated Section VII of Addendum No. I of the Agreement; it also freely negotiated Rules 48 and 53. Thus, it should be required to live up to their provisions.

Furthermore, Carrier, in the first instance, determined that Positions No. 4335 and then 4374 had to be filled on Sunday, March 25, 1979. Having so determined, Carrier elected to fill the positions by assigning the Claimant to them.

Finally, the Hours of Service Law did prevent Claimant from protecting his assignment on Monday, March 26, 1979. However, the law did not prevent Claimant from being compensated for that day pursuant to Rules 48 and 53 of the Agreement. As Referee Larkin concluded in Award 7403 of this Board:

"As to the merits of the instant claim, this Board has repeatedly held that where an employe has regularly assigned hours and is directed to work a different trick, thus losing his regular assignment because of the limitations of the Hours of Service Law, he is entitled to pay for the hours lost on his regular assignment Awards 2742; 3097; and 6340." (emphasis supplied)

For the foregoing reasons, the claim is sustained.

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

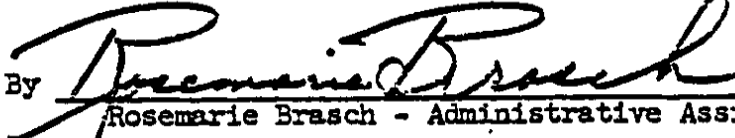
That the Agreement was violated.

A W A R D

Claim sustained.

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 14th day of December 1982.