NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24073
Docket Number CL-24313

THIRD DIVISION

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Elgin Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9549) that:

1. Carrier violated the effective Clerks' Agreement when it failed to follow established agreed to procedures in filling a vacation relief assignment on July 22, 23, 24, and 25, 1980;

2. Carrier further violated the effective Clerks' Agreement when it failed to follow established agreed to procedures in the selection of employes to perform extra work on July 28, 29, August 4 and 5, 1980;

3. Carrier shall now compensate Computer Operator E. Minarich for eight (8) hours' pay at the time and one-half rate of Position AC-946 for each of dates July 22, 23, 24, and 25, 1980, and shall compensate Computer Operator Phil Rodriguez for eight (8) hours' pay at the time and one-half rate of Position AC-947 for each of dates July 28, 29, August 4 and 5, 1980.

OPINION OF BOARD: Carrier operates a computer center at Joliet, Illinois. This office is operated as a sub department under the Accounting Department and is located within Seniority District No. 2. At the time of the dispute the computer center was operated two turns per day.

The circumstances out of which the two claims arose are different even though the Carrier chose to combine them in its declination of April 8, 1981.

The issues in the Minarich claim arose out of using a keypunch operator to assist a computer operator in a vacation relief situation. In the Rodriguez claim, a keypunch operator was used to assist a computer operator due to an extra load of work.

In support of the claims the Union cites Article 10 of the National Vacation Agreement of December 17, 1941, and also Rule 42 of the basic agreement with the Carrier as follows:

> "Article 10 of the National Vacation Agreement of December 17, 1941:
>
> (b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent

"of the work load of a given vacation employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

"Rule 42 - Overtime, reads in part:

(f) In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply to working rest days and holidays. It is recognized that when overtime work is necessary on a position the incumbent has the right and responsibility to perform such overtime work. If for good and sufficient reasons, however, the incumbent is not able to perform such overtime work it will be offered on a seniority basis to the available qualified employe in that location and department. If such overtime work is declined by all other employes to whom it is offered the junior available qualified employe will be required to perform the work. The Carrier will give notice as far in advance as possible to employes required to perform overtime work.

(g) An employe denied overtime work which he is rightfully entitled to will be compensated at the time and one-half rate, the same as if he had performed the work."

The Union contends that "The National Vacation Agreement sought to prevent any overburdening of remaining employes and, accordingly, it provided that no one employe should absorb another's work while on vacation. It is clearly and unequivocally stated that this distribution will be '...among two or more...' employes."

The Board does not agree that the National Agreement requires the distribution to be among two or more employes. It only sets up this condition to show how employes will be paid in the event the work ~~is~~ distributed among two or more employes. The National Agreement does require that not more than 25% of the work load can be distributed without hiring a relief worker. In the Minarich claim, this condition was complied with in that only 24% of the work load of the vacationing employe was performed by Key Punch Operator Kennedy.

Rule 42 of the basic agreement cited by the Union in support of the Minarich claim does not appear to have applicability. It sets forth requirements for working overtime. This condition does not exist in this situation. Rule 45 of the same agreement covering the subject of absorbing overtime provides:

> "It is the intention, however, that an employe may be used to assist another employe during his tour of duty in the same office or location where he works and in the same seniority without penalty. An employe assisting another employe on a position paying a higher rate will receive the higher rate for the time worked while assisting such employe, except that existing rules which provide for payment for the highest rate for entire tour of duty will continue in effect..."

The above quoted provisions clearly recognize Carrier's right to use workers in the same office and seniority district to assist other employes as was done in the Minarich case.

In the Rodriguez claim the question of vacation relief is not involved. Here, the situation is that Key Punch Operator Kennedy, of the same office and seniority district was used on given dates to assist in performing the same kind of work, as in the Minarich claim. The reason was to provide assistance with an extra work load.

In this case the Union cites alleged violations of Rule 42, as in the previous case. Here again, the Board holds that overtime is not an issue and thus Rule 42 does not appear to have been violated. On the other hand, Rule 45, quoted above clearly provides for the use of one employe in the office and seniority district to assist another without penalty.

In both of the cases, the Union alleges violations of local agreements covering calling procedures. Those agreements have been examined in the resolution of this case and clearly cover arrangements and the order of calling computer operators for overtime. Nowhere in the provisions of the local agreements is there any indication that they supersede Rule 45 quoted above.

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 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.