

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24526
Docket Number CL-24280

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company - Pacific Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9495) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when on June 26, July 3 and 10, 1978, instead of senior employe R. W. Ogden, employes E. O. Brunin and J. G. Green were called and used to perform overtime service on Position No. 3, 1st Telegrapher-Clerk-Towerman.

(b) The Southern Pacific Transportation Company shall now be required to allow Mr. R. W. Ogden eight (8) hours' additional compensation at the time and one-half rate of Position No. 3 (\$58.41 per day) each date June 26, July 3 and 10, 1978.

OPINION OF BOARD: The pivotal issue in this dispute is whether Carrier violated the pertinent seniority provisions of the Agreement, namely, Rules 26 and 27, when it did not assign Claimant to the vacancy clerical-towerman position at Elvas Tower, Sacramento, California, on June 26, July 3 and 10, 1978. There were no Guaranteed Extra Board clerks available at the time to fill the position on a straight time basis and Carrier, of necessity, was required to fill it by overtime. As noted by Carrier, the established practice on the property when calling for overtime vacancies when the Hours of Service Law is involved, is to consider an employe not available for call if his use would preclude him from subsequently protecting his position under the aforesaid law. In the instant case, it did not observe this practice when it assigned the two clerks to this position. On Monday, June 26, 1978, the vacancy was filled from 12:00 Midnight to 8:00 A.M. by Clerk E. P. Brunin, who was occupying a relief position at Elvas Tower. Clerk Brunin was scheduled to work that day on Position No. 1, as telegrapher-clerk-towerman, assigned hours 8:00 A.M. to 4:00 P.M. On Mondays, July 3 and 10, 1978, the vacancy was filled from 12:00 Midnight to 8:00 A.M. by Relief Clerk J. G. Greene. Clerk Greene was scheduled to work those days on Position No. 1, Sacramento Bridge, assigned hours 8:00 A.M. to 4:00 P.M. In both cases, the assigned employes did not work their scheduled tours.

In defense of its position the Organization argues that Claimant should have been called to fill the vacant position, since he was senior to Clerks Brunin and Greene. The Organization asserts that seniority has always been the governing criterion when assigning covered employes to straight time or overtime work and Carrier erroneously avoided this selection factor when it made the contested assignments. The Organization cited several Third Division Awards to buttress its position and averred that this was not an emergency situation which would justify extraordinary measures. (See Third Division Award Nos. 4339, 6013, 20120 et. al. vis adjudicative principles of seniority.)

Carrier maintains that it was forced by the exigencies of the moment to adjust the work force by using clerks who could not thereafter work their regular assignments because of the Hours of Service Law restrictions. It argues that it was not required to observe seniority when it made these successive assignments, since having exhausted the normal call procedures to fill the vacant position, it was not estopped from exercising its traditional managerial rights. It asserts that while Claimant's seniority was greater than Clerks Brunin and Greene, the Agreement did not provide super seniority rights when situations such as this one arise. In effect, it contends that in the absence of specifically defined seniority rights, it has the singular prerogative to assign employees when and where needed.

In our review of this case, we concur with the Organization's position. We recognize Carrier's predicament when it was required to fill the vacant position, but it was, plainly speaking, an overtime assignment. It was not an emergency situation, which by definition, and Agreement language, permits the prompt reassignment of regular assigned employees to the emergency situs or a pressing contingency necessitating extraordinary measures. The vacancy did not require employees possessing unique or specialized skills or a level of experience and fitness that would warrant the selection of junior employees. It could have been assigned to Claimant under the same conditions. He would not have worked his regular assignment on the claimed dates.

While Carrier argues that it had the right to fill the position in any manner it saw fit, after exhausting the straight time call procedures, we cannot conclude that Carrier was de facto excused from filling this position without observing seniority. The issue is not whether Claimant possessed super seniority rights, but whether seniority was applicable to this overtime assignment. We find that it was so applicable. Such assignment would have been consistent with the intended purpose of Rule 27 and the implicit spirit of the collective bargaining Agreement. Moreover, it would have comported with our generic holding in Third Division Award No. 4393, wherein we held in pertinent part that:

"Seniority applies to all positions, whether it be a regular bulletined position, a temporary position or one that is required to be performed only with overtime work."

In the absence of preclusive Agreement language to the contrary, we find no justifiable reason to deviate from this standard. The Agreement was violated when Carrier assigned Clerks Brunin and Greene to the No. 3 Telegrapher-Clerk-Towerman position and Claimant is entitled to the time and one half rate of compensation claimed. We agree with Carrier, however, that he should not be paid twice for the one hour overlap between 7:00 A.M. and 8:00 A.M. on the dates claimed and for this time he should only be paid the difference he would have earned had he worked overtime.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September, 1983.