

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24707
Docket Number CL-24603

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Maine Central Railroad Company - Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9596)
that:

1. Carrier violated the Agreement between the parties when on August 6, 1980, it did not use Clerk S. E. Merrill to cover the Clerk's assignment for Position 16R, 3:00 P.M., to 11:00 P.M., Rigby, Maine.

2. Carrier shall compensate S. E. Merrill, Clerk, Machine Room, Rigby, Maine, eight (8) hours at the double time rate of pay for August 6, 1980.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On August 5, 1980, Claimant, S. E. Merrill, worked his regular Clerk's position from 11:00 p.m. to 7:00 a.m., August 6, 1980. Following this trick, Claimant worked the 7:00 a.m. to 3:00 p.m. trick in Position 7-R. He was compensated time and one-half for this service. Also, on that day, a vacancy arose on the 3:00 p.m. - 11:00 p.m. trick in the capacity of instructor teaching a new machine operator. Claimant asked to work this trick as well, at double time rate of pay. Carrier denied Claimant's request. Instead, it allowed a clerk junior to Claimant to work this trick at time and one-half rate of pay.

The Organization contends that Carrier's failure to allow Claimant to work the 3:00 - 11:00 p.m. trick on August 6, 1980 violates Rules 3 and 16 of the Agreement. These rules read, in relevant part:

"Rule 3(b) - SENIORITY DISTRICT:

Within the confines of each seniority district, employees have prior rights in accordance with their length of service within the district (fitness and ability being sufficient) to promotion, assignment, displacement and work."

"Rule 16 - DAY'S WORK AND OVERTIME

(a) Except as otherwise provided in these rules, eight (8) consecutive hours exclusive of the meal period shall constitute a day's work. Except as otherwise provided in these rules time worked in excess of eight (8) hours on any day will be considered as overtime and on the minute basis at the rate of time and one-half. Time worked in excess of sixteen (16) hours on any day shall be paid at the rate of double time.

....

"(e) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the employee."

The Organization maintains that these rules require that the senior employee be assigned when a position vacancy occurs. Here, Claimant was senior to the Clerk who was awarded the third trick position on August 6. Thus, the Organization concludes that Claimant should have been awarded that vacancy.

The Organization acknowledges that if Claimant did fill the position in question, he would have worked twenty-four straight hours. However, the Organization points out that Rule 16(a) specifically sets forth the rate of pay, double time, for those employees working more than sixteen hours in any one day. Thus, the Organization reasons that Rule 16(a) contemplates that employees will work in excess of sixteen hours in a day.

Finally, the Organization asserts that Carrier's sole reason for denying Claimant the opportunity to work the third trick was economy. By assigning a junior clerk to that position, Carrier paid him time and one-half instead of the double time rate to which Claimant would have been entitled. In the Organization's view, Carrier may not discount Claimant's seniority simply to save money. Accordingly, the Organization asks that the claim be sustained and that Claimant be compensated eight hours at the double time rate of pay for August 6, 1980.

Carrier, on the other hand, asserts that it has not violated the Agreement here. It argues that it has the right to cover jobs at less punitive rate and not violate the Agreement. Here, Carrier insists that Claimant, after sixteen consecutive hours of work, would not have performed adequately as an instructor working with an inexperienced operator. Thus, it maintains that it could call in a more rested though junior employee to fill that position at a less punitive rate than that to which Claimant would have been entitled.

Our review of the Agreement reveals that the claim must fail. This is so for a number of reasons.

First, Rule 16(a) does not require that senior employees must be given positions if they have worked sixteen hours in a single day. Instead, it provides that if employees work more than sixteen hours, they are to be paid double time for such work. Thus, Rule 16(a) does not mandate that the position in question be given to Claimant.

Second, under the facts of this case, Carrier could reasonably conclude that Claimant would not be sufficiently rested to perform adequately as an instructor with an inexperienced employee. Thus, Carrier could deny the position in question to Claimant account of his not being "sufficiently fit" to perform this assignment.

Finally, we do not believe that Awards cited by the Organization support its contention here. These Awards stand for the proposition that Agreements must be interpreted according to their plain meaning. Here, however, no rule requires that senior employees must be given an available position after working sixteen hours in one day. Rather, Rule 16(a) mandates the rate of pay for employees if they are awarded positions after working sixteen hours. Simply stated, then, nothing in the Agreement required Carrier to award Claimant the position in question. Thus, Carrier acted reasonably when it gave that vacancy to a more rested, though junior, Clerk. Accordingly, and for the foregoing reasons, the claim must fail.

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

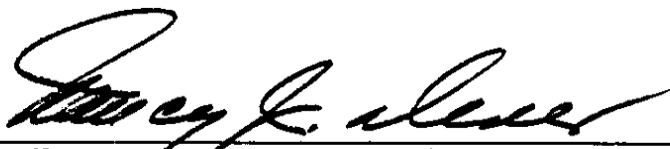
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.