

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25105  
Docket Number CL-24078

Wesley A. Wildman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9438)  
that:

1. Carrier violated the effective Clerks' Agreement when, on December 6, 13, 20 and 27, 1979, it failed and refused to call Mr. J. Harris for work on his rest days when it was necessary to train a rest day relief employee.

2. Carrier shall now compensate Mr. J. Harris for eight (8) hours' pay at the time and one-half rate of a Crew Caller position for each of dates December 6, 13, 20 and 27, 1979.

OPINION OF BOARD: The facts in this case are not in dispute. Claimant is a Crew Caller with regularly assigned 11 to 7 shift hours and rest days on Wednesday and Thursday each week. The Carrier established a regularly assigned relief position to "cover" the Claimant's regular rest days. The new incumbent on the relief job was not qualified as a Crew Caller and, as a result, a third, experienced bargaining unit employee was assigned to work with the new relief job incumbent on a number of shifts over a three week period to train him in crew calling work. As the employee who did the training work had 40 hours of work and was not an "available extra", Claimant asserts that pursuant to the following relevant contract language in the Agreement between the parties, he (Claimant) should have been assigned the training work on his rest days at overtime rates.

"RULE 1

Scope

These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees, subject to such modifications as are included herein. Position or work coming within the scope of this agreement belong to the employees covered thereby, and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto."

"RULE 3

.... Days Work--Work Week--Overtime

3. (f) Work on Unassigned Days - 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 40 hours of work that week, in all other cases, by the regular employee."

The single key issue in this case is the applicability to our set of facts of the so-called "Unassigned Day Rule" (3(f), above).

As a threshold matter, Carrier disputes the applicability of Rule 3(f) to the instant case on the ground that the "subject" of our case, i.e., the shifts on which the training took place and for which Claimant is requesting compensation were, indeed, regularly assigned relief shifts and, thus, do not (any of them) constitute "... a day which is not a part of any assignment". In other words, is (as the Carrier impliedly argues) the training assignment involved here, although performed by a second employee, somehow an integral and inseparable part of the regularly assigned relief job shift on which the incumbent was being trained? As will soon become clear below, it is not necessary to a proper disposition of this case to rule on the legitimacy of this argument.

Rule 1 (see above) speaks of the "scope" of contract coverage generally being "... the work of the craft or class of clerical, office, station and store-house employees...". Similarly, Rule 3(f) has as its subject "... work ..." to be done either by others or by "... the regular employee ...", i.e., presumably "work" regularly done by the regularly assigned employee.

A number of cases have been cited and offered in evidence by the parties interpreting these and similar or related contractual provisions. All have been studied by the Board. Those which we find to be clearly apposite and the most persuasive constitute a respectable body of precedent on the Third Division (flowing from a reasonable interpretation of relevant contract language) to the effect that: "... the Unassigned Day Rule is applicable for the 'regular' employee when it is demonstrated that the work is done solely by him during his regular hours ..." (Award 19672), and that language identical to that of 3(f) in our case is applicable only to "... regularly assigned work which needs to be performed outside the assigned schedule of the regular employee..." (Award 19802).

The facts before us do not, in our judgment, establish that the ad hoc, sporadic or occasional training assignment of the sort which gave rise to this case is an integral part of the "work" of the Crew Caller position or that this training chore is work necessarily or routinely performed only by a regular employee. Thus, we find that the "Unassigned Day Rule" is not, in this case, applicable or controlling. Accordingly, the claim is denied.

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

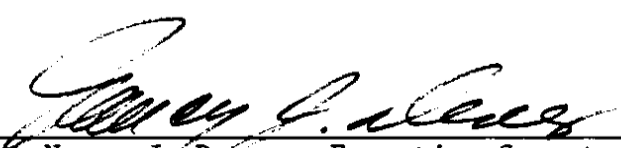
That the Agreement was not violated.

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 23rd day of October, 1984.

