

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25343
Docket Number CL-25205

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9812) that:

1. Carrier violated the Rules Agreement between the parties, when it failed to utilize Clerk R. Serres to work an eight (8) hour vacancy which existed on the position of Programmer No. 781, August 6, 1982.

2. Carrier shall now be required to compensate Clerk Serres eight (8) hours pay, at overtime rate, for August 6, 1982.

OPINION OF BOARD: The pivotal issue in this dispute is whether Rule 24 L, Sections 1 through 5 were violated when Carrier called Clerk B. Cook to fill the vacancy of Programmer - Position No. 781 on August 6, 1982. The duty hours of the vacant position were 7:30 A.M. to 4:30 P.M.

Claimant filed this grievance when Carrier offered the assignment at the overtime rate to Clerk Cook who was regularly assigned to a yard office position. Clerk Cook's normal duty tour was from 3:00 P.M. to 11:00 P.M.

There is no contestation regarding the senior status of Clerk Cook or the relevancy of Rule 24 L, Sections 1 through 5, but Claimant asserts that Carrier misapplied this Rule when it assigned Clerk Cook to fill the position. It is Claimant's position that she was qualified and available for the entire duty tour as contrasted with the status of Clerk Cook who was not available for the full tour since it necessitated a one and one-half (1 1/2) hours overlap between his regular tour and the assigned duty hours of Position No. 781. Claimant had worked her assigned tour on the previous trick which ran from 11:00 P.M. to 7:00 A.M.

Carrier avers that it properly assigned Clerk Cook since he was the senior available qualified employe desiring to fill the vacant position. It argues that while he was not available for the full eight (8) hours of Position No. 781, Rule 24 L does not restrict nor require the regular assigned employe to work his own position for the entire trick. In its Ex Parte Submission, it asserted that Claimant was unqualified for the position.

In considering this case, the Board concurs with Claimant's position. Rule 24 L is unambiguous and requires that prior to the assignment of the senior available qualified employe, the person desiring such an assignment must meet specified prerequisite requirements. The applicable requirement herein is Section 4 of Rule 24 L, which reads as follows:

"Except in instances where an employee can reach the new work location without undue delay, the employee must be available for the entire tour of duty."

Careful analysis of this provision indicates that except in instances where an employe can reach the new work situs without undue delay, the employe "must" be available for the entire duty tour. By definition and consistent with the manifest intent of the parties, the use of the word "must" was meant to be construed literally, not liberally or conditionally; and the employe accepted for the vacant position was expected to be free from any duty impediments. There is only one exception set forth in Section 4 and that is when an employe can reach the new work location without undue delay. This exception is not present here.

In the instant case, Clerk Cook was the senior available qualified employe, but he was not available for the entire tour of Position No. 781. In the absence of past practice that it was customary to overlap assignments, we are constrained to interpret Section 4 strictly and in accordance with normative contract construction principles. As such, we find that Carrier improperly assigned Clerk Cook to the position.

In its Ex Parte Submission, Carrier included a document marked Exhibit H which contained arguments that Claimant was unqualified for Position No. 781. This document was not exchanged on the property and pursuant to the Board's Circular 1 requirements, it is new material and not properly before us.

Upon the record, we find this to be a valid claim, and thus, it 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 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

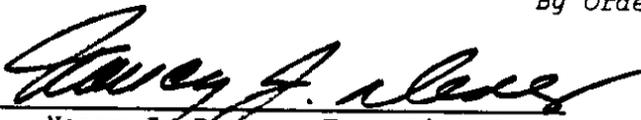
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.