

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25383
Docket Number CL-24517

W. S. Coleman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9560)
that:

(1) Carrier violated the Clerk-Telegrapher Agreement in effect between the Parties when, on July 23, 1980, it required 3rd trick Ass't Chief Clerk C. F. Allen to vacate his regular position and to fill 3rd trick (Relief) Operator position.

(2) Because of such impropriety, Carrier shall be required to compensate Claimant C. F. Allen an additional eight (8) hours' pay (\$74.72) for the date of July 23, 1980.

OPINION OF BOARD: C. F. Allen, the Claimant in this case, held a regular Clerical assignment at Cowen, West Virginia. He was assigned to the third trick, five days per week, Monday through Friday. There also is another third-trick Clerk assignment (Operator-Clerk) at this location and that assignment is filled on a seven-day basis. On July 23, 1980, the incumbent Operator-Clerk did not report off. Claimant was instructed that he would have to handle the train orders that would have been handled by the Operator, as well as perform his own duties. Organization contends that Claimant was removed from his job and assigned to another job that could have been filled by other means. It argues that this is an Agreement violation and that Claimant should be paid for it, as specified in Rule 24, Note (b):

"(b) An employee held off or removed from his regular position and required to fill a vacancy other than as outlined in the first sentence of paragraph (a) of this note is entitled to a minimum of eight (8) hours' pay at pro rata rate for each position."

Carrier contends that Claimant was not removed from his assignment and placed on the Operator assignment. Rather, the Operator's assignment was blanked and Claimant only handled four train orders that would normally have been handled by the Operator. It cites Rule 16 of the Controlling Agreement as its authority to assign these train orders to Claimant.

"RULE 16

"Preservation of Rates

"(a) Employees temporarily assigned to higher rated positions shall receive the higher rates for four (4) hours work or less, and if held on such positions in excess of four (4) hours, a minimum of eight (8) hours at the higher rate. Employees temporarily assigned to lower rated positions shall not have their rates reduced.

"(b) A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment."

This Board has reviewed the record and the arguments presented and is persuaded the evidence presented in this case weighs in favor of the Carrier's position. Rule 16 (b) clearly supports Carrier's argument that it can temporarily assign small portions of work to an employee who would not normally perform the work. In this instance, that is what took place and this Board can find no basis on which to deny the Carrier the right to do so.

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

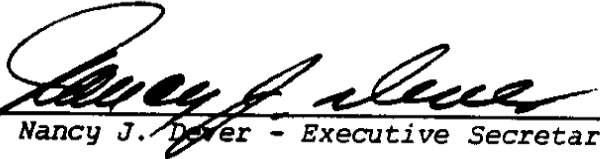
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dover - Executive Secretary

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

LABOR MEMBER'S DISSENT TO
AWARD 25383 , DOCKET CL-24517
(REFEREE W. S. COLEMAN)

The majority has erred in their decision in this instance through the use of faulty logic. They concluded on Page 2 of their decision, the following:

"...Rule 16(b) clearly supports Carrier's argument that it can temporarily assign small portions of work to an employee who would not normally perform the work. In this instance, that is what took place..."
(Underlining our emphasis).

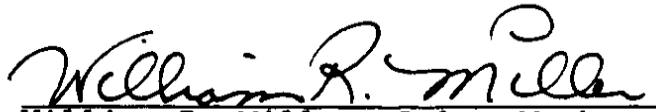
Factually, the above statement is incorrect as this case involves the Carrier's utilization of Claimant on two (2) separate and distinct positions simultaneously for eight (8) hours. One would infer from reading this decision that the violation involved only a few minutes.

Rule 16(a) does not allow one employee to work two (2) regularly scheduled positions concurrently while declaring one of them blanked and vacant. The rule specifically deals with the diversion of an employee, either to a lower or higher rated position, entitling such employee to the preservation of the rates of the position diverted to or their own rate, whichever is the highest.

Paragraph (b) of Rule 16 deals with the temporary assignment of one employee to another position. It provides that the employee assigned will fulfill the duties and responsibilities of one position during the time occupied, whether the incumbent of the position is absent or not and will receive the rate of

the position, no more and no less. Nowhere does it state or even infer that the Carrier may use one employe to work two (2) regularly assigned scheduled positions simultaneously or concurrently, performing separate duties for singular pay as was the case in this instance. Claimant was required to handle the duties of his own position, Third Trick Assistant Chief Clerk and those of the Third Trick Relief Operator and thus, the Carrier violated Rule 24 in its subsequent improper payment of monies due Claimant.

Award 25383 is palpably in error and because of such, carries no precedential value.


William R. Miller, Labor Member

Date April 23, 1985