

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25502
Docket Number CL-25346

Herbert L. Marx, Jr., Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9810) that:

1. Carrier violated Rule 21 - Extra Boards and paragraph 2(c) of Memorandum of Agreement covering establishment, maintenance and operation of Extra Boards when, on April 23 and 24, 1980, Position Machine Operator-Yard Clerk at Whitehall, N.Y., 2300 hours was vacant. No Extra Clerk was available. Trainmaster Welch marked furloughed employee Charpentier on Extra Board to cover the vacancy.

2. Claimant Carswell was qualified, available but not called for these vacancies. Therefore, Claimant Carswell should be compensated at the time and one-half rate eight hours each day April 23 and 24, 1980. (44-80, 45-80)

OPINION OF BOARD: A vacancy existed in a Relief Clerk Position on April 23-24, 1980. The Carrier states that the Extra Board had been reduced to one employe prior to this event, by mutual consent with the Organization. The one Extra Board member was unavailable to fill the vacancy. The Carrier then called in a furloughed employe to cover the vacancy.

The Organization argues that the vacancy should have been filled on an overtime basis by the Claimant, who was available for the assignment.

The Carrier's first written denial of the claim was "account no basis". The second level denial merely stated: "We do not agree with any of the instances that the Clerks Rules were violated". The denial at the level of Superintendent-Labor Relations read as follows:

"Decision: As Superintendent-Administration
advised in his August 4, 1980
denial to you:

'*** This was merely an increase of an extra board
when there was obviously a need to do so. Extra boards
are reduced and increased all over this railroad as the
needs decrease and increase. ***'

There was no rule violation as alleged.

Claim is without merit and rule support and is denied."

As pointed out by the Organization, the Memorandum of Agreement in connection with Rule 21, EXTRA BOARDS, reads in pertinent part:

"2. (c) Any increase or decrease in the number of of Extra Board employes at a given point shall be subject to mutual agreement of the parties hereto, and shall be established as provided in paragraphs 2(a) and (b). In case of reduction, employes affected will be permitted to exercise their seniority rights as provided in Rule 16 of the Clerks' Agreement."

This directly contradicts the reasoning in the Superintendent-Labor Relations reply.

In its Submission to the Board, the Carrier bases its defense on the right to create an "emergency board" to cover vacancies. There is no record that this argument was raised on the property or that this was contemplated in calling in the furloughed employee. Thus, this is improperly set forth for the first time before the Board. Further, it appears to contradict directly the Carrier's reason offered at the highest level on the property.

The record thus shows no convincing answer to the Organization's contention that a furloughed employee, not part of a then recognized Extra Board, was improperly called to work in place of an available employee.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1985.

