

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25596
Docket Number CL-25707

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad
Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9857) that:

1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it permitted a furloughed unassigned employe to request a vacation vacancy in lieu of using a regular employe to avoid the payment of overtime.

2) Carrier shall now be required to compensate Employee Ronald E. Moellenbrink eight (8) hours pay at the time and one-half rate of Train Clerk Position 04370 for dates of July 27, 28, 31 and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, and 15, 1982.

OPINION OF BOARD: Employee Dron was displaced from her regular assignment July 6, 1982, and moved to a temporary vacancy on R-14 July 8th. Prior to the completion of that assignment, she requested and received Carrier permission to move to a third trick vacation vacancy commencing July 27, 1982. Organization contends that Claimant, with more seniority than Dron and regularly-assigned occupant of a Train Clerk position, should have been assigned to work the third trick position on an overtime basis and that Carrier violated the Rules Agreement at Bensenville when it assigned Dron, whom he contends was a furloughed, unassigned employe, to the vacation vacancy. Claimant seeks 8 hours pay at time-and-one-half as compensation for overtime lost as a consequence of the failure to assign him the 15-day vacation fill-in assignment. He continued to work second trick.

Rule 9 and Note 1 thereof state that temporary vacation vacancies, if filled, will be assigned to the "...regularly assigned employe in the seniority district making request thereunder...on the basis of seniority, fitness and ability..." The request, according to this Note, is to be made in writing with the Officer having supervision over the position involved and, most significantly, must be made "...at least twenty-four (24) hours in advance of the time he expects to commence filling the temporary or vacation vacancy."

The Note, referring to Rule 9(h), states that when a regularly-assigned employe is assigned in accordance with its provisions, the employe (unless disqualified) "...must remain on that position for the duration of the vacation or until the position is bulletined and assigned either as a temporary or permanent vacancy...."

The Organization contends that, since Dron had exercised her seniority July 8th to a temporary vacancy, she was not a regularly-assigned employe and therefore under the aforementioned Rule 9, Note 1, could not properly request the temporary vacancy on third trick. Although Dron was not, at the time she moved to the third trick position, a regularly-assigned person in R-14, the evidence shows that Claimant did not make the required request to fill that vacancy. Neither Claimant nor Dron met the assignment requirement.

Such a request is a contractually agreed upon precondition for entitlement to the assignment and, irrespective of Carrier's improper assignment of Dron, without having made the request, Claimant is not entitled to a make whole remedy.

While the Board finds a violation of Rule 9(g), the claim for compensation by Claimant 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 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.

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