

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25606
Docket Number CL-25354

Eckehard Muessig, Referee

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

PARTIES TO DISPUTE:

(
(The Denver & Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9839)
that:

1. Carrier violated Rules 43(g), 34(a), 33(c), and other rules of the Clerical Agreement when on October 28, 1982 and on October 29, 1982, it did not properly fill the yard performance job at Roper, Utah.

2. Carrier shall now compensate the senior furloughed employee that is not on a leave of absence, M. Nabaum, eight (8) hours regular pay for October 28, 1982 and for October 29, 1982; and if not available, then,

3. Carrier shall be required to compensate the next out employee, available for overtime eight (8) hours pay at the punitive rate for October 28, 1982 and for October 29, 1982; and/or

4. Carrier shall be required to compensate T. Parkinson four (4) hours regular pay in addition to the eight (8) hours pay she received on October 28, 1982 and on October 29, 1982.

OPINION OF BOARD: This dispute arose after the Employee who regularly occupied the 7:00 a.m. to 3:00 p.m. Yard Performance Position was off on account of illness on October 28 and 29, 1982. On these dates, Carrier utilized the Claimant, who was regularly assigned to a relief position to fill the Yard Performance Position. In turn, the Claimant's relief position was filled on both dates by the same Extra Board Employee. At issue here is whether Rule 43(g) of the Parties' Agreement prohibits Carrier from assigning work in the manner in which it was assigned in this case.

Fundamental to the Organization's position is its contention that Sick Leave Rule 43, relied upon by the Carrier to deny the claim, does not have control over the other rules of the Agreement. The Organization essentially asserts that the Carrier's construction of Rule 43 of the current Agreement is clearly improper and was done only to avoid overtime payment. It draws a distinction as to the application of Rule 43, maintaining that while it conveys to the Carrier the right to distribute the work of an ill employee, if the Carrier does more than this, as in this dispute when employees were moved about, then other Agreement rules, principally Rules 33 and 34, would control.

The Carrier, for its part, essentially construes Rule 43 to permit the filling of short vacancies created by the absence of a regular occupant due to illness who receives benefits under Rule 43. In this case, it states that the Employee who was off ill did receive benefits under Rule 43.

The Board has thoroughly reviewed the record developed by the respective parties. On the basis of the evidence properly progressed to us, we find that the claim cannot be sustained. It is evident that the Claimant was qualified to fill the vacancy caused by the illness of another employe, that he was paid at the higher appropriate rate, and that there were no other qualified persons available for the position in question on the Extra Board.

With respect to the other elements of this claim, the Claimant has failed to establish that, under the circumstances reflected by the record herein, the Carrier had to recall a furloughed worker or that a short vacancy must be filled on an overtime basis.

In summary, we do not find under the facts of record that the Carrier improperly applied Rule 43(g) of the controlling Agreement when it assigned the work of an Employe absent on account of illness (but under pay) to the Claimant.

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

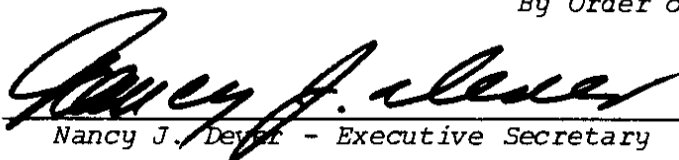
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Devor - Executive Secretary

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

