

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25633
Docket Number CL-25455

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9828) that:

(a) The Southern Pacific Transportation Company violated its agreement with this Organization when it refused and/or failed to properly bulletin Guaranteed Extra Board Positions 953 and 960 at Brooklyn Yard; and

(b) The Southern Pacific Transportation Company shall now be required to maintain the Guaranteed Extra Board as provided for under Article VII, Section 1(b)1 of the September 16, 1971 Agreement; and

(c) The Southern Pacific Transportation Company shall now be required to compensate senior furloughed Clerk Carol J. Weidig eight (8) hours pay each day and/or forty (40) hours per week, beginning June 28, 1982.

OPINION OF BOARD: The Organization contends that the Carrier has violated and continues to violate Rules 33, 34, 35 and Article VII-Extra Boards when it refused to maintain the proper number (i.e., 12) of positions on the Guaranteed Extra Board (GEB) at Brooklyn Yard, Oregon by:

1. Counting employes formerly assigned to the Brooklyn Yard Extra Board, who are on leave of absence or have a bid to a regular assignment under the provisions of Rule 33.
2. Refusing to recall furloughed employes to the GEB vacancies who are qualified and available.
3. Furloughing employes from the Brooklyn Yard Extra Board even though it causes the number of Extra Board positions to decline below the requirement prescribed by Article VII of the TOPS Agreement (not less than fifteen percent (15%) of the total positions relieved by the extra board).

The Organization further contends that the instant dispute is a continuing violation, thereby not time barred.

Carrier maintains the instant claim has a beginning date of June 28, 1982, and is based on a one-point-in time "occurrence". Carrier further maintains that the instant claim was not presented until September 2, 1982. According to the Carrier since the claim was not presented within sixty (60) days from the date of the occurrence, it is barred under the provisions of Rule 24 and therefore should be dismissed. Third Division Award 19125 and Third Division Award No. 22507.

Carrier also maintains under Section 1(b), Article VII of the September 16, 1971 Agreement, employees who have bid or displaced to Extra Board positions retain permanent ownership of their Guaranteed Extra Board position and are still part of the position count even though they may be filling temporary or seasonal positions or off sick or when filling a temporary or seasonal position.

Carrier asserts that when an incumbent of a Guaranteed Extra Board position is terminated or when he bids to a permanent regular position, then such action does create one less Guaranteed Extra Board position and the Guaranteed Extra Board position would then be advertised permanent if needed to meet the 15% requirement.

Carrier further asserts that the Organization did not and could not meet its burden of proof to show that the Carrier's method of computation of GEB position was in violation of Section 1(b), Article VII of the September 16, 1971 Agreement, or that it was contrary to accepted past practice under that Article. Carrier also asserts that it is not required to advertise temporary vacancies or establish new Extra Board positions to temporarily fill in for Guaranteed Extra Board employees who have bid to temporary or seasonal positions.

In the Board's view this claim involves two issues: (1) whether the claim is time barred under Rule 24, and (2) whether the Carrier may count employees formerly assigned to the Brooklyn Yard GEB who are either on leave of absence or have bid on regular assignments under the provision of Rule 33 in order to meet the mandate of Article VII which requires that the number of Guaranteed Extra Board Positions will be no less than fifteen percent (15%) of the number of permanent positions, including permanent assigned relief positions to be served from such locations.

Upon careful consideration of the entire record of this claim, the Board concludes that the instant claim is a continuing violation and therefore is not time barred under Rule 24(d). Third Division Award No. 18539 and Third Division Award No. 18627. The Board notes, however, the rule limits monetary payment to sixty (60) days prior to the filing of the claim. Third Division Award No. 18539.

The Board further concludes that Carrier violated the Agreement when it refused and/or failed to properly bulletin Guaranteed Extra Board Positions 953 and 960 at Brooklyn Yard. The Board's findings and reasoning are as follows.

Article VII, Section 1(b) states:

"(b) Each carrier party hereto is authorized to determine the appropriate size of the extra boards, subject to the following conditions:

1. The number of extra board positions at each of the locations set forth in (a) of this section shall be not less than fifteen percent (15%) of the number of permanent positions, including permanent assigned relief positions to be served from such locations; if the number of positions on Guaranteed Extra Boards at any location drop below fifteen percent (15%) and there is insufficient number of qualified unassigned employees eligible for recall to vacancies on the extra board, as provided herein, carrier will arrange to hire an appropriate number of additional employees.

(c) New Guaranteed Extra Board positions will be advertised on the same basis as bulletin rules in effect, except that hours of service will be omitted, and rate of pay will be rate applicable to service performed, but not less than guaranteed rate, as the case may be."

The Board notes that at the time the instant dispute arose, there were eighty (80) positions that were relieved by the Extra Board. Therefore pursuant to Article VII, Section 1(b)1 there should have been twelve (12) employees on the Extra Board ($15\% \times 80 = 12$). Instead, there were ten (10) positions on the GEB when this claim was instituted.

The Board is of the opinion that Article VII is clear as to the formula to be used to determine the number of positions on the GEB. Notwithstanding, Carrier contends that it was not obligated to bulletin these positions. According to Carrier, employees who have bid or displaced to Extra Board positions retain permanent ownership to their GEB position and are still part of the position count even though they may be filling temporary or seasonal positions or off sick. The Board disagrees.

Article VII does not expressly except the advertising of Extra Board positions. In addition the Board notes that Rule 33(a) Advertising and Assigning Positions states in relevant part, "All new positions and vacancies, except those of students, shall be advertised at least semi-monthly". Rule 33(a) does not except GEB temporary vacancies caused by sick leave or leave of absence. The Board further notes that Rule 33(c) Note requires notices covering GEB positions. On a similar score Rule 35 states that "when an employe makes application for and is awarded a position, his former position will be considered vacant and advertised".

The Carrier also argues that historically and traditionally GEB positions have never been bulletined on a temporary basis in the event an incumbent of one of these positions have been sick, on leave of absence or awarded a temporary position. According to the Carrier this has been the past practice. The Board has carefully reviewed the record and finds no evidence to support this contention or to support the conclusion that such a past practice exists. Accordingly, the Board concludes that the Carrier violated the applicable Rules and Agreement when it had less than 15% of the employes to be covered on the Guaranteed Extra Board. Third Division Award No. 23854.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.



CARRIER MEMBER'S DISSENT
TO
AWARD 25633, DOCKET CL-25455
(Referee Stallworth)

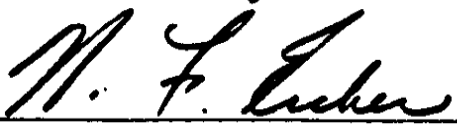
The Majority decision is contrary to the application of the extra board agreement. Since the inception of the extra board agreement on April 20, 1966, it has been the practice to bulletin only permanent vacancies on extra board positions. Only when an incumbent of an extra board position is terminated, resigns, or bids to a permanent regular position does such action create one less extra board position that is advertised permanent to meet the 15% requirement. The Carrier has never bullentined an extra board position on a temporary basis as a result of an incumbent of the position being sick, on leave of absence, or taking a temporary position. The Organization has freely concurred that extra board positions are not bullentined temporary. To bulletin an extra board position as temporary as this award requires would be a violation of the incumbent's seniority entitlement to the position. To bulletin the vacancy in question would have the unfortunate result of one extra board clerk "filling a vacancy" of another extra board clerk who might be off sick, or otherwise off, for less or more than thirty days. This Award results in counting any days an extra board employee was filling a vacancy as a vacancy itself, and if a particular extra board employee filled one or more vacancies consecutively, then his position would have to be advertised.

Award 23854 of this Division, cited by the Organization and referred to by the Majority, involves a different issue than the instant case and has no application herein.


The Majority decision flies in the face of almost twenty years of consistent past practice. In this regard the Board's attention is directed to its Awards 9757, 13732, 13735, 14064, 14065, 14155 and 20994.

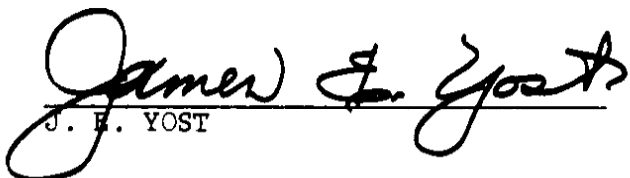
For the foregoing reasons, the Carrier dissents to the Award.


M. W. FINGERHUT


W. F. EUKER


M. C. LESNIK


P. V. VARGA


J. E. YOST