

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25906

Docket Number CL-24954

George V. Boyle, Referee

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

PARTIES TO DISPUTE: (

(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9723) that:

1. Carrier violated the effective Clerks' Agreement when, on October 30, 1981, it used an extra employee who had already performed forty hours of work in his workweek in preference to a regular employee;

2. Carrier shall now compensate Mr. John Bazik eight (8) hours' pay at the time and one-half rate of Position JT-559 (North End Yard Clerk) for October 30, 1981."

OPINION OF BOARD: On Friday, October 30, 1981, Mr. E. T. Holden, an Extra Board employee, worked at straight time on the sixth day in a seven day period during which he had one rest day. The Organization alleges that this contravenes the Agreement which provides for a workweek which begins on Saturday and provides for five days work in each seven with two rest days which need not be consecutive.

Further it alleges that the Carrier should not have used an Extra Board employee for this assignment but should have used a regular employee under the provision of the agreed upon procedure for filling vacancies. It asserts "it should be noted that the Extra Board Agreement does not contemplate the use of Extra Board employees for vacation relief and the Carrier violated this Agreement in so doing."

The Organization has not grieved to pay the half time it alleges should have been paid Mr. Holden, since the time limit had expired. It now claims eight (8) hours at time and one half for the regular employee it believes should have worked, had the proper procedure been followed.

The Carrier responds that no vacancy existed, rather Mr. Holden had worked in place of the regular incumbent who was absent on vacation from Monday, October 26 through Friday, October 30 and had observed his rest days of October 31 and November 1, 1981. As such he had been paid the regular rate for the workweek and the Carrier had incurred no premium penalty for same. Moreover since no "vacancy" existed, only a vacation absence, the Carrier was not obliged to use the "Order of Calling to Fill Vacancies" under the existing Agreement.

Also it is argued that this eventuality had been specifically dealt with in "Rule 42 - Overtime", which provides:

" . . . (c) Employees worked on more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another on to or from a furloughed list . . ." (emphasis added)

The Carrier cites Article 12 of the Vacation Agreement (12-17-41), as controlling. The relevant portion of Article 12 reads:

"(a). . . a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof . . ."
(b) . . . vacation . . . absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority." (emphasis added)

By the above rubric the assignment on October 30 cannot constitute a vacancy and one did not exist. Thus Mr. Bazi cannot invoke the procedure to be followed in filling one. The Carrier cites a number of instances wherein this right is affirmed and Award No. 20523 states: " The claim asserts a violation of Rule 34 - Short Vacancies and the National Vacation Agreement. The assignment of Claimant to replace a vacationing employee did not violate Rule 34 since Section 12 (b) of the Vacation Agreement provides that vacation absence will "not constitute vacancies in their position under any agreement." This language is clear and unambiguous.

Too, since Mr. Bazik would have to be compensated at a premium rate, the Carrier had the right to schedule an employee which would relieve it of that expense. In this case Mr. Holden, an Extra Board employee was used without penalty.

The question of whether or not an Extra Board employee was used properly in this case is answered in the affirmative. Other instances are cited in Carrier's submission, uncontested in the Employees' Rebuttal, of Extra Board employees being assigned to fill vacation absences. Included is one involving a Claim wherein " . . . an extra board clerk was assigned to fill a vacation vacancy on position No. GT-34 . . ." The General Chairman avers, "It is our position that pursuant to the Extra Board Agreement Clerk Irma Shadrick was assigned to fill a vacancy on Position GT-34 which extended for more than 3 days. . . ." Thus the Employees cannot claim that this is substantially new or different from prior assignments of Extra Board employees and grievable on these grounds to transcend the Extra Board Agreement or the practice of filling vacation absences.

The Carrier asserts the Mr. Bazik is not the proper Claimant but this matter is moot since the Board holds that the Claim itself is invalid and denies it.

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 had jurisdiction over the dispute involved herein; and

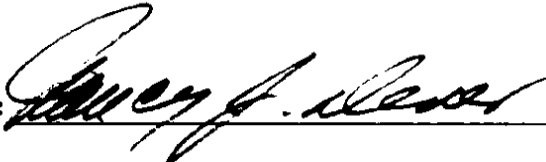
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.