

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10195) that:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Barstow, California on April 29, 1986 when it failed and/or refused to call F. L. Bonilla to protect overtime on April 29, 1986, and

(b) Claimant F. L. Bonilla shall now be compensated four (4) hours and thirty (30) minutes at the rate of time and one half of Claimant's regularly assigned Position No. 6056 in addition to any other compensation received for this date as a result of such violation."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The pivotal question in this dispute is whether Carrier was obligated to call Claimant when the incumbent of Position No. 6055 Car Clerk was impelled to leave his assignment early on April 29, 1986. The duty hours of this position were 3:00 P.M. to 11:00 P.M., while Claimant's regular assignment ran from 7:00 A.M. to 3:00 P.M. It was Carrier's position that since the parties considered such vacancies to be short vacancies as that term is understood under Rule 14-B it was indeed permissible to fill the vacancy pursuant to this Rule. Consequently, it maintained that since there were no qualified and available off-in-force reduction employees to fill the vacancy, which in effect amounted to the balance of the shift, 6:35 P.M. to 11:00 P.M., it moved another employee working the same shift hours to Position No. 6055.

Contrawise, the Organization contended that such action violated Rule 32-G, since the defining conditions under which short vacancies were filled under Rule 14 were not present and accordingly the assignment should have been filled on an overtime basis. In other words, the assignment should have been filled by an available off-in-force reduction employee or a senior qualified regularly assigned employee at the point who has served written notice of his desire to protect such service. It asserted that when Carrier failed to observe the order of precedence under Rule 14 and instead diverted another employee from his assignment, it violated Rule 32-G precluding the absorption of overtime. In essence, the Organization argued that since the instant circumstances necessitated the filling of the position on an overtime basis, Claimant should have been assigned the work in accordance with Rule 32-G(2).

In considering this case, we agree that vacancies of the type that developed herein are short vacancies and could be filled under Rule 14. However, Carrier is obligated to follow strictly the defining requirements of Rule 14, specifically B and C, when filling the position as a short vacancy. In the case herein, the employee who filled the remaining hours of Position No. 6055 on April 29, 1986, was not the senior qualified off-in-force reduction employee or the senior qualified regularly assigned employee at the point who served appropriate written notice. He in effect was moved from his regular position to cover the remaining hours of the vacated position. Since there is no provision in Rule 14 for filling short vacancies in that manner and since there is no other Agreement Rule for filling short vacancies, Carrier, of necessity, would be required to either blank the position or fill it on an overtime basis. Upon the record, then, we must conclude that Rule 32-G was violated. Claim sustained only for four (4) hours and thirty (30) minutes at the pro rata rate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1990.