

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Chicago, South Shore and South Bend Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10493) that:

1. Carrier violated the effective agreement when it failed to call Mr. Wayne Gibson for a short vacancy on his rest day, October 7, 1989, in preference to an employee junior in service to Claimant;

2. Carrier shall now compensate Mr. Gibson eight (8) hours' pay at the time and one-half rate of Position 282 for October 20, 1989."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant was hired on February 7, 1968, and performed service for the Carrier as a Freight and Yard Clerk for twenty-one years. On October 7, 1989, the incumbent of Position No. 282/291, reported off ill in the early morning hours. The Assistant General Freight Agent called the junior Yard Clerk to perform the duties of the position. He did not call the Claimant, who was senior, because the "claimant had not worked the position for a number of years."

The Organization filed a claim with the Carrier by submission of its letter of October 10, 1989. The Organization maintained that the Claimant, having seniority rights over the junior employee, should have been called to perform these duties in accordance with Rules 8, 11 and 41 of the working Agreement.

"Rule 8 - Promotion, Assignments and Displacements

Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail."

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"Rule 11 - Short Vacancies

(a) New positions and/or vacancies of thirty (30) calendar days or less duration shall be considered short vacancies and need not be bulletined. However, when there is reasonable evidence that such new positions and/or vacancies will extend beyond the thirty (30) day limit, they shall immediately be bulletined, showing, if practicable, probable or expected duration.

(b) Employees will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 8 and paragraphs (e), (f) and (g) of Rule 19."

"Rule 41 - Overtime

(e) SERVICE ON REST DAYS. Service rendered on assigned rest days (other than Sunday) shall be paid for under the call rule unless relieving an employee assigned to such day in which case, they will be paid for eight (8) hours at the rate of the position occupied or their regular rate, whichever is higher. Where Sunday is one of the rest days, service on Sunday will be paid for as provided in Rule 42. Regular assigned rest days shall not be changed except after such advance notice to the employee as is required under Rule 21.

(Interpretation) It is understood that employees called on their rest days (not relieving another employee) will be paid three (3) hours for two (2) hours work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis. If an employee is called on his rest day or days to relieve another employee, he will be allowed a minimum of eight (8) hours at the rate of time and one-half."

Carrier pointed out that Claimant had not worked Position No. 282/291 for at least three years, and asserted he therefore was not qualified to work said position. The Carrier further asserted that it continuously fills vacancies due to illness with the senior, most qualified, available employee. Carrier states that Position No. 282/291 is now primarily an outside position and the incumbent is responsible for the C&O connection (3 tracks, N&W connection (3 tracks), Lincoln Avenue Yard (3 tracks), Tremont siding (1 track), Bailly NIPSCO plant (8 tracks), Bailly Siding (3 tracks), Bethlehem Steel (5 tracks-430 yard), Track Mill (6-20 and N. scale track), and B&O connection (2 tracks). According to the Carrier, the employee on this position would be responsible for numerous additional activities and stated that "A clerk who normally works an inside job and suddenly has to work the Bethlehem Position No. 282/291 without qualifying will have problems doing the work and will cause unnecessary delays."

Claimant has a seniority date of February 6, 1968. At the time of the incident giving rise to the present claim, he was the occupant of Freight and Yard Clerk Job No. 285 at Carrier's Michigan City Yard Office. The duties of this position are listed by bulletin as follows:

"Must be a touch typist, or equivalent thereto in proficiency, must have valid driver's license, be able to change tires on company vehicles, check yards and list cars to crews and be familiar with interchange, all aspects of waybilling, freightbilling, and agency accounting pertaining to the handling of freight cars, and clerical duties incident thereto. Must be able to do all other clerical duties as may be assigned."

The Organization demonstrated that during his tenure Claimant successfully worked a variety of positions including the position in dispute. Additionally, Claimant had worked every yard clerical assignment on this Carrier, including that of Chief Yard Clerk, "the most responsible yard clerical position on the property."

On the date claimed the vacancy existed on Position 282, another Freight and Yard Clerk position in the same office. The duties of that position are listed as follows:

"Must be a touch typist with a 40 word per minute proficiency. Must have a valid driver's license, and be able to change tires on agency vehicles, inspect mechanical protection cars. Must check tracks and list cars to crews and be familiar with interchange, all aspects of waybilling and freightbilling, agency accounting pertaining to handling of freight cars and clerical duties incident thereto, must be able to do all other clerical duties as may be assigned."

So far as the record shows, the duties of the positions are virtually identical and the yard checking consists primarily of making physical checks of five tracks. Further, the Organization showed that only on "very rare occasions" is a check required of a track used for scrap by Luria Brothers. The other work in connection with Bethlehem Steel involves interchange and billing which the Claimant routinely performs.

The principles governing disposition of this case were set forth by the Board in Third Division Award 19758 as follows:

"We have consistently held, that unless overtime is specifically excluded from the seniority provisions of an agreement, it is subject to them (Award Nos. 2716; 2994; 4531; 6136; 15640).

In 15640 (Ives) we said, that a carrier 'has an obligation to make a reasonable effort to call the senior available employee to do overtime work, before using a junior employee to do such work."

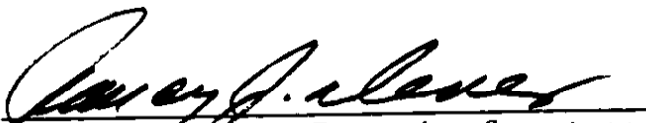
Carrier has failed to show justification for the prima facie violation of the Claimant's seniority rights.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.