

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30105
Docket No. CL-30421
94-3-92-3-231

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Transportation Communications International
Union)

PARTIES TO DISPUTE:

(
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10783) that:

1. Carrier violated the effective agreement when it failed to call Mr. D.C. Warn for a vacancy on the relief of his position (Position #004, Traveling Clerk) on March 5, 1989;
2. Carrier shall now compensate Mr. Warn eight (8) hours' pay at the time and one-half rate of his position for the above referred to date."

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 employee 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.

Claimant is the incumbent of a Traveling Clerk position headquartered at Boone, Iowa. The hours of assignment for the Traveling Clerk position are 8:30 a.m. to 5:00 p.m. with rest days on Sundays and Mondays. Position Relief No. 004 protects Claimant's job on its rest days.

On Sunday, March 5, 1989, the Extra Board Clerk who was working Relief Position No. 004 called before the start of the shift to inform the Carrier that she would be tardy to work that morning. At about 10:00 a.m., the Extra Board Clerk called again and said that, due to child care difficulties, she would be unable

to protect her assignment. Since the regularly assigned employee on Position No. 29, which worked from 10:00 p.m. to 6:00 a.m. had already marked off due to illness, the Carrier officer directed the Extra Board Clerk to make herself available to fill the Position No. 29 vacancy at 10:00 p.m. later that Sunday. She complied.

The Carrier did not attempt to fill Relief Position No. 004 and none of the duties of the position were performed. In essence, the Traveling Clerk job was blanked.

The Organization filed a claim alleging that the Carrier should have called Claimant on his rest day to fill Relief Position No. 004. According to the Organization, the Carrier diverted the Extra Board Clerk from her regular job (Relief Position No. 004) to fill the third shift vacancy and thus, Claimant was entitled to be called, at the overtime rate, to fill the Relief Position pursuant to the Understanding following Rule 9. Rules 9(f) and 9(g) along with the Understanding read:

"(f) Bulletined positions pending assignment, may be filled temporarily by the senior qualified employee, holding seniority in the district involved, who has filed a written request for same. Where such vacancies are filled by new employees or employees from other seniority districts, no seniority rights will be established by such assignment unless he is permanently assigned to the position; if so, seniority will date from the first day service was performed thereon.

(g) New positions or vacancies of thirty calendar days or less duration shall be considered as temporary and may be filled without bulletining in manner provided for in paragraph (f) hereof. If such positions or vacancies extend or are contemplated to extend beyond thirty calendar days, they shall be bulletined as provided in paragraph (a) hereof.

* * * *

Understanding to Rule 9(f) and (g):

* * * *

When due to absence of regular relief employee on assignments in six or seven day service, and the position is to be filled at punitive rate, the regular incumbent of the specific position to be relieved, if available, will first be entitled to fill the position on that day; otherwise by the senior available qualified employee who

has in writing requested such consideration. In other instances when there is no employee available to fill temporary or pending assignment vacancies at pro rata rate, and it is necessary to fill a position on basis of punitive rate, the senior available qualified employee who has in writing requested such consideration will be used to fill the vacancy." [Emphasis added.]

The express language of the Understanding to Rule 9 demonstrates that the provision is applicable if the position is to be filled at the overtime rate. Nothing in the Understanding mandates the Carrier to fill a single-day vacancy, such as Relief Position No. 004, so long as the Carrier does not reassign the duties of the job. Contrary to the Organization's assertion, the evidence indicates that the Extra Board Clerk marked off of the relief assignment as opposed to being diverted from the assignment at the Carrier's behest. The Carrier only instructed her to fill the third shift regular assignment vacated by an ill employee after the Extra Board Clerk had notified the Carrier that she was unable to work her relief position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.