

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30464
Docket No. CL-29911
94-3-91-3-303

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10596) that:

- (a) Carrier violated the provisions of the current Clerks' Agreement at Los Angeles, CA, on March 24, 1990, when it failed and/or refused to pay C.R. Foster sick pay of Transportation Service Specialist Position No. 6274, and
- (b) C.R. Foster shall now be compensated four (4) hours' pay at the straight time rate of Transportation Service Specialist Position No. 6274 for March 24, 1990, in addition to any other compensation Claimant may have received for this day."

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 was regularly assigned to Transportation Service Specialist Position No. 6255 at Los Angeles, California. This position was scheduled to work from 7 a.m. to 3 p.m., Monday through Friday and had assigned rest days of Saturday and Sunday. On Saturday, March 24, 1990, a short vacancy existed on TSS Position No. 6274 which was scheduled to work from 7 a.m. to 3 p.m. with an assigned workweek of Saturday through Wednesday with Thursday and Friday as assigned rest days. The regular incumbent of the 6274 position had marked off ill. There is nothing in the case record to indicate whether or not the short vacancy on Position 6274 extended beyond the one day here in question. Under the provisions of Rule 14 - FILLING SHORT VACANCIES, Claimant was called to fill the vacancy on Position 6274. Claimant reported as assigned and worked from 7 a.m. until 11 a.m. when he marked off ill. For the service performed, Claimant was allowed four hours pay at the time and one-half rate. The claim in this case seeks an additional payment of four hours at the straight time rate for sick pay in accordance with the provisions of Rule 46 - SICK LEAVE.

The claim as initially submitted in this dispute stated, in pertinent part, as follows:

"While we rely upon the entire Agreement as support for our claim, your attention is specifically directed to Rules 1, 2, 4, 5, 6, 8, 14, 26, 32 and 60."

However, in the initial claim presentation, only Rule 14 was discussed by the Organization from among the litany of Rules stated. On appeal of Carrier's initial rejection of the claim, the Organization added Rule 46 to the list of Rules allegedly involved and concluded its claim presentation with the statement, "Rule 46 covers sick pay and Claimant is entitled to be compensated for March 24, 1990, as he was occupant of Position No. 6274 under the Agreement." Only Rules 14 and 46 were referenced in the Organization's on-property argument. All of the other rule citations appear to be a "shelling of the woods."

Carrier declined the claim on the basis that Claimant had been properly used under the provisions of Rule 14-C(2) to fill the short vacancy and inasmuch as Claimant did not "regularly" work on his rest day, he was not entitled to sick leave pay for the "short vacancy" work performed on his assigned rest day of Position 6255.

Thereafter, there was no further written record developed on the property relative to the respective positions of the parties. There were several exchanges of correspondence between the parties which dealt with time limit extensions and confirmation of conferences, but neither party generated any further written record of position or argument in relation to this claim. The sum total of the on-property record of position and argument in this case is found in the two claim letters from the Organization and in Carrier's declination of the claim by the highest appeals officer.

Before the Board, the Organization made the argument that when Claimant was called to fill the short vacancy on Position 6274, he immediately and automatically relinquished the rest days which were assigned to position 6255 during the period he was on the short vacancy. Therefore, it argued that Claimant was not working on his Position 6255 rest day on Saturday, March 24, 1990, but rather was working on the first day of the work week of Position 6274 and was paid at the time and one-half rate for the service actually performed on Position 6274 in accordance with the provisions of Note 1 following Rule 14-F. The Carrier contended before the Board that this position by the Organization was new argument which had not been made on the property and could not be considered by the Board.

The language of the pertinent portions of the Agreement Rules which are involved in this case reads as follows:

"Rule 46 - SICK LEAVE

46-A. * * *

Note 2: Where employees are regularly required to work their 8-hour assignments on their rest days and/or holidays, when they are absent due to sickness on such days, the designated holidays and assigned rest days will be considered as working days for the purpose of applying this Rule 46; however, the absent employee will be allowed only straight time rate for this time lost on such days.

* * * "

"Rule 14 - FILLING SHORT VACANCIES

- 14-A. Vacancies of 15 work days or less duration shall be considered 'short vacancies' and, if to be filled, shall be filled as hereinafter provided in Rule 14.

* * *

- 14-C. When providing short vacancy relief the following order of procedure will be observed:

* * *

- (2) By using the senior qualified regularly assigned employee at the point who has served notice in writing of his desire to protect such service.

* * *

14-F. * * *

Note 1: A regularly assigned employee used under the applicable provisions of Rule 14 will:

- (a) be paid time and one-half for time worked in excess of 40 hours or on more than five days in the work week of his regular assignment in moving to the short vacancy
- (b) assume the rest days of the assignment on which he is protecting the short vacancy

- (c) not be paid time and one-half for time worked in excess of 40 hours or on more than five days in the work week in returning to his regular assignment
- (d) not be paid for time lost in moving to and from the short vacancy

* * *

The Board has repeatedly held that neither party to a dispute can prevail before the Board on the basis of allegations, issues and arguments that were not made a part of the case record during the handling of the claim on the property. The objective of the Railway Labor Act is to require both sides to a dispute to come together on the property and make a complete, open and honest disclosure of their respective positions in an effort to reach agreement and resolve disputes. It is impossible for a party to comply with the requirements of the Act without disclosing to the other party during handling on the property ALL of the evidence and arguments specifically relied upon in support of its position.

Having said that, we must now look at the evidence and arguments which were made a proper part of the on-property record of this case. In the initial presentation of this claim, the Organization made specific reference to Rule 14 and contended that Claimant was entitled to sick pay "account he was occupant and regularly assigned employee under Rule 14-C(2) until released." This reference was to Claimant's use on Position 6274. On appeal of the claim to the highest appeals officer on the property, the Organization continued its argument on the basis that Claimant was properly assigned to the short vacancy "as provided in Rule 14-C(2)"; that he "was occupant of Position No. 6274 under the Agreement"; and, that he was "entitled to be compensated" under the provisions of Rule 46.

While these points may not have been as fully developed by the Organization on the property as they could have been, nevertheless, the issue of regular occupancy of a position to which assigned under the short vacancy rule was introduced into the case record during the on-property handling of this dispute, as was the applicability of Rules 14 and 46 to this dispute introduced into the record on the property. The amplification and development of these items in the Organization's Ex-Parte Submission did not go beyond the limits of Rules 14 and/or 46 nor did it go beyond the basic contentions which were made during the on-property handling of the claim. Therefore, it is the Board's opinion that, in this instance on the basis of these circumstances, there was no introduction of new issues into this claim for the first time before this Board.

As for Carrier's reliance on Note 2 of Rule 46, the Board is not convinced that this Rule provision has any applicability in the instant case. The language of the note is specific and unambiguous. It directs its meaning to employees who "are regularly required to work their 8-hour assignments on their rest days and/or holidays" (underscore ours for emphasis). The note does not address or in any way impinge on the applicability of the provisions of Rule 14, especially Note 1(b) thereof which clearly provides that the regular assigned employee used under Rule 14 will "assume the rest days of the assignment on which he is protecting the short vacancy." Even though the Carrier argued before the Board that the employee filling the short vacancy does not walk in the regular incumbent's shoes, the language of the Note to Rule 14 does not support such a contention or conclusion.

There is no apparent contention in this case relative to Claimant's basic entitlement to sick leave pay, only to the particular circumstances under which this particular sick leave claim is found. After considering the applicable Rule provisions in relation to the particular circumstances of the case, the Board is convinced that sick leave pay is properly allowable. The position of the Organization is, therefore, upheld.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.