

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31473
Docket No. SG-31842
96-3-94-3-150

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago and North Western
(Transportation Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Chicago and North Western Transportation Company (CNW):

Claim on behalf of S. R. Godfrey for payment of 16 hours at the time and one-half rate and 8 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 21(c), when it failed to assign the Claimant to relieve a second shift Maintainer position at Proviso Hump Yard on December 12, 13, and 14, 1992."

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.

The issue at bar involves the application of Rule 21(c). The Board's review of the facts concludes that a vacation vacancy existed and the Claimant was not called to fill the vacancy. The Organization's claim for December 12, 1992 is rejected by this Board as the on-property record indicates that Maintainer Kringle was not on vacation on that date. The Organization's claim for December 14, 1992 is denied as Carrier indicated without rebuttal that the position was not worked on that date. The dispute herein is therefore considered by this Board as whether the Carrier correctly applied the Agreement on December 13, 1992.

The Organization alleges that Maintainer Kringle was on vacation on December 13, 1992 and that under the Rule, the Carrier was required to fill the position by calling Claimant. Rule 21(c) states:

"(c) Relief Work: Employees holding positions in crews bulletined and assigned as relief positions will be used for relief work to fill vacancies, vacation relief or pending assignment by bulletin."

It is the Organization's position that the second shift Maintainer position occupied by Mr. Kringle at Proviso Hump Yard was vacant due to vacation. The Organization asserts that the Claimant held a position bulletined as a Relief Signaller and was available.

The Carrier denied any Agreement violation noting that on the date in question it followed practice and prerogative by covering the open position by use of employees on adjoining shifts. The record is undisputed that the first shift employee worked four hours over to cover the vacant second shift and the third shift employee reported early, being compensated at the overtime rate and per applicable Rules to cover the remaining four hours of the vacant second shift. The Carrier asserts it is not required to fill the one day vacancy, that the third shift employee who worked was senior to Claimant and that its actions have Award support (Special Board of Adjustment No. 371, Award No. 14).

The Board reviewed the on-property record, the applicable Rules, Awards and evidence. Assertions of practice have been rebutted and evidence is insufficient to support that conclusion. There is no language in the Rule, supra, which supports applicability, either when the vacation is one week or greater or allows Carrier determination to utilize Rule 21(c) only under various crew shortage conditions wherein Claimant's removal from his regular assignment would be convenient. Those Carrier arguments must be rejected as they are not in the language of the Rule.

Accordingly, the Carrier was not required to fill the vacation vacancy of December 13, 1992. However, as that vacancy was filled, the Carrier was required to do so under the applicable Rule. Failure to call the Claimant for the vacation vacancy violated the Agreement. Claimant is to be compensated as he would have been compensated if properly called. In other words, Claimant is entitled to eight hours overtime at the Maintainer's rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 25th day of April 1996.