

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31820
Docket No. CL-32075
96-3-94-3-483**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11085) that:

- 1. The Houston Belt & Terminal Railway Company violated the Rules Agreement effective April 15, 1972, as amended, when it denied clerical employee P. P. Shuman her seniority rights to occupy and perform service on a holddown during the period September 4th through September 8th, 1993 on position of Relief 401.**
- 2. The Houston Belt & Terminal Railway Company shall be required to afford clerical employee P. P. Shuman eight (8) hours pay for each date of the holddown and at the rate of the respective positions which Relief 401 protects."**

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 were given due notice of hearing thereon.

Claimant, with an established seniority date of March 15, 1976, was regularly assigned to the Freight Agency Extra Board at the Carrier's Union Station Building in Houston, Texas. On September 3, 1993, Claimant submitted a written request to occupy a five-day holddown on Relief 401 in the OCC Department commencing at 7:00 A.M. on the following day. She was advised by her Terminal Manager that evening that she could not go on a holddown in the OCC Department while she was assigned to the Freight Agency Extra Board, and that she must remain in her Department. The Terminal Manager directed the OCC Chief Clerk to dispose of Claimant's written request. Another clerical employee regularly assigned to the OCC Extra Board, who had less seniority than Claimant, was utilized on the holddown in question. Claimant was subsequently charged with insubordination for requesting and accepting a position in the OCC Department during her Terminal Manager's scheduled vacation, and the resulting discipline was appealed by the Organization in a separate claim.

Rule 24, Extra Board, governs the procedure for filling temporary vacancies. It provides, in pertinent part:

- “(a) All temporary vacancies caused by regular assigned employee laying off and/or due to vacations will be filled by the rearrangement of the remaining regular assigned force in that office, with senior employees being given their choice....
- (b) Vacancies left after rearrangement of the remaining regular assigned employees will be filled from the extra lists hereinafter provided.
- (c) There shall be three extra lists,”

There is no dispute that the OCC and Freight Agencies are two separate offices at Carrier's Union Station facility, and maintain separate and distinct Extra Boards. The July 20, 1983 Memorandum of Agreement between the Carrier and the Organization provides, in pertinent part:

“In the application of Rule 24, the filling of holddowns of five (5) days or more, IT IS AGREED:

The holddown will be filled by the senior qualified clerk making written application to the Chief Clerk for such vacancy. Clerks moving onto a holddown will be compensated at the pro rata rate. If no applications are received for the holddown, the senior qualified extra board employee will be called.

Upon completion of the holddown, employee will occupy their regular assigned position, observing such rest days of the holddown.

This agreement may be cancelled by either party upon five (5) days written notice to the other party."

The Organization contends that the July 20, 1983 Memorandum of Agreement amended Rule 24 to permit the filling of temporary vacancies to the senior qualified Clerk making written application without reference to the office which said Clerk is regularly assigned to. The Carrier argues that it complied with the call procedures established by the language and intent of Rule 24 and the Memorandum of Agreement, as well as past practice, in filling the five day vacancy in the OCC Department's Relief 401 position by utilizing the senior qualified Clerk making written application within the same office.

A review of the record convinces the Board that the Organization failed to meet its burden of proving that the Memorandum of Agreement eliminated the requirement to fill vacancies within the same office clearly set forth in Rule 24 and substituted strict seniority in its place. The language of the Memorandum of Agreement states that it is to be used "in the application of Rule 24," thereby maintaining the efficacy of that Rule, and does not negate the procedure of filling vacancies with the rearrangement of the remaining regular assigned force "in that office." Rather, it amends the call procedure to require employees within each office to submit their requests for holddowns in writing, to insist that Extra Board employees assigned be "qualified," and to clarify the off days of such assignment. The undisputed evidence reveals that the practice of filling temporary vacancies within the same office if qualified staff exists has been consistently applied both before and after the execution of the Memorandum of Agreement.

While the parties have subsequently cancelled the Memorandum of Agreement, the pertinent language and their practice at the time in issue requires that the claim be denied.

AWARD

Claim denied.

ORDER

**This Board, after consideration of the dispute identified above, hereby orders
than award favorable to the Claimant(s) not be made.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 1996.