

PUBLIC LAW BOARD NO. 3540

Case No. 37

PARTIES TO DISPUTE: Brotherhood of Railway Airline, and Steamship
Clerks, Freight Handlers, Express and
Station Employes

STATEMENT OF CLAIM:

(a) Carrier violated Rule 24 of the Clerks General Agreement No. 9, and the terms of Memorandum Agreement signed March 27, 1980, and Letter Agreement dated March 28, 1980 when on June 23, 1980 it arbitrarily rearranged Clerk Raymond J. Gerrard from the position of Dock Clerk C-75, Coal Machine No. 4 to Coal Machine No. 2.

(b) Carrier shall now compensate Clerk Gerrard eight (8) hours pay at the pro rata rate for June 23, 1980, in addition to any other earnings for that day, account rearranged to from his regular assignment.

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimant R.J. Gerrard was regularly assigned to the Dock Clerk Position, C-75, Coal Machine No. 4, at Carrier's Presque Isle facility in Toledo, Ohio. Claimant's work week ran from Sunday through Thursday, with rest days on Friday and Saturday, at a rate of \$80.23 per day. On Monday, June 23, 1980 upon reporting for his tour, Claimant was notified that he was to perform his tour at Coal Machine No. 2 rather than his regular assignment at Coal Machine No. 4.

On June 23, 1980, the Organization filed the instant claim alleging that Carrier's action violated Rule 24 of the Clerks' General Agreement No. 9, the Memorandum Agreement of March 27, 1980, and the Letter Agreement dated the following day. Carrier timely denied this claim. Thereafter, the claim was handled in the usual manner, on the property. It is now before this Board for adjudication.

The Organization contends that Carrier's action constituted a rearrangement not in conformity with the requirements of Section 2 of the March 28, 1980 Agreement, and that, as a result, Claimant is entitled to compensation as provided in Rule 24(c) of the Clerks' General Agreement. The Organization notes that Section 2 permits rearrangement only "to fill vacancies on other Dock Clerk positions having the same starting time, or to assist the incumbents of such other positions within their assigned hours," neither condition existing here.

The Organization urges that there was no Dock Clerk position assigned to work at Coal Machine No. 2 during Claimant's shift, and that Claimant was not rearranged to fill a vacancy within Section 2. Additionally, it points out that Claimant had not filed a letter of rearrangement. It concludes that Claimant is entitled to "be paid a minimum day at the pro rata rate of his regular position, in addition to the amount to which [he is] entitled for working position to which arranged" within Rule 24(c). Accordingly, the Organization seeks that the claim be sustained.

Carrier, on the other hand urges that it acted in accordance with the various Agreements. Carrier maintains that it is within its authority to establish a position on machine No. 2 for one day, and that, Section 2 authorizes the utilization of

Claimant to fill the vacancy thus established. In Carrier's view, Section 2 authorizes the shifting of Claimant to perform his tour at another machine.

In Carrier's view, Organization has failed to sustain its burden of proof. Carrier argues that the Organization did not, and can not, prove that the Agreement was violated when Claimant was asked to perform the same duties, during the same hours, for the same amount of compensation, merely because the machine was number 2 rather than 4. Accordingly, for these reasons, the Carrier asks that the claim be denied.

After careful review of the record evidence, We are convinced that the claim must be sustained. This is true for the following reasons.

First, the language of Section 2 of the March 28, 1980 Letter Agreement clearly provides that an incumbent of Dock Clerk positions No. 2,3 or 4 may be "utilized to fill vacancies on other Dock Clerk positions having the same starting time..." when there are "no loading operations ...in progress" at his regularly assigned position. The facts set forth in the job description sheets for Monday, June 23, 1980, establish that there was no Dock Clerk scheduled to work on machine No. 2 during the midnight to 8 a.m. shift. (See Employes' Exhibit "L") Accordingly, Claimant was not "utilized to fill [a] vacancy... having the same starting time..." within Section 2. A vacancy

is not created until an employe scheduled for the tour fails to appear for that tour. Thus, the conclusion is inescapable, that where no employe is scheduled, no vacancy within the meaning of Section 2 can occur. Claimant was not utilized to fill a vacancy.

Second, as a result of the foregoing, Claimant falls within the ambit of Rule 24(c). This Rule provides in relevant part:

"An employe rearranged to a position the starting time of which is the same as his own starting time, who has not filed letter of rearrangement for the position to which rearranged, will be paid a minimum day at the pro rata rate of his regular position, in addition to the amount to which entitled for working position to which rearranged.

For the foregoing reasons, the claim must be sustained.

FINDINGS: The Public Law Board No. 3540 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 3540 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD:

Claim sustained.

R.A. Scardelletti
R.A. Scardelletti, Employee Member

Richard P. Byers
Richard P. Byers, Carrier Member

Dissenting

M.F. Scheinman
Martin F. Scheinman, Neutral Member

7/24/90