Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6888
Docket No. 6693
2-C&O-CM-'75

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 41, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(The Chesapeake and Ohio Railway Company (Chesapeake District)

Dispute: Claim of Employes:

1. That the company violated the existing rules of agreement on April 9, 10, 11, 17, 18, 19, 20, 21, 22 and 23, 1972 account utilizing D. W. VanBuren (furloughed carman helper) to fill vacancies as carman on a day to day basis under Rule 27½ in violation of Article 4 of the November 1, 1954 National Agreement, Rule 27½ and Carmen's Special Rule 177.

2. Accordingly, the following listed carmen are each entitled to be compensated at Carmen's time and one-half (1½) rate on the dates as listed.

Name	Date
B. L. Williams	April 9, 1972
A. L. Drumheller	April 10, 1972
T. B. Unroe	April 11, 1972
L. C. Reid	April 17, 1972
W. M. Powell	April 18, 1972
B. D. Adkins	April 19, 1972
R. K. Higgins	April 20, 1972
B. L. Williams	April 21, 1972
P. B. Ross	April 22, 1972
C. T. Tyree	April 23, 1972

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 record shows that the Claimant, a furloughed carman-tentative was used to fill temporary carman vacancies on a day-to-day basis at Carrier's Clifton Forge, Virginia facility on dates of April 9, 10, 11, 17, 18, 19, 20, 21, 22, and 23, 1972. Despite some apparent confusion on the record, analysis shows that Claimant had established seniority as a carman-tentative and that his standing on the roster was proper.

Petitioner contends that the use of a carman-tentative to fill carman vacancies on a day-to-day basis is a violation of Rules 27½ and Carmen's Special Rule 177 of the Agreement. The Organization maintains basically that regular carmen should have been used, on an overtime basis, if necessary, to fill these temporary vacancies. Accordingly, the instant claims are presented for time and one-half rate in favor of several named carmen.

Carrier asserts in the first instance that no regular carmen were available to cover the temporary vacancies except on an overtime basis. The position of Carrier is grounded in the main, however, on an alleged "Letter Agreement" dated December 17, 1964 wherein an earlier claim was paid by Carrier in satisfaction of the Organization's argument that a carman-tentative rather than a carman-helper should have been used to fill a temporary vacancy in a carman's position under Rule 27½. It is noted that this settlement letter, accepted and signed by the Organization's then General Chairman, endorses a position diametrically opposite to that of the Organization in the instant case.

We have reviewed carefully the pertinent Agreement provisions and the positions of the parties. We note that the Agreement itself is silent on the precise question before us viz, whether carmen-tentative may be used consistent with Rule 27½ to fill temporary carmen vacancies on a day-to-day basis. The position of the Organization is not unreasonable or implausible that seniority principles could lead to a negative conclusion on the issue. But in searching for the intent of the parties, we are met by the so-called Letter Agreement of December 17, 1974. Ordinarily, offers of compromise and settlements of earlier disputes on the property are deemed inadmissible in arbitration hearings. This rule of exclusion has been adopted to foster efforts at settlement short of a formal hearing, without fear of prejudicing a case if the settlement overtures are not successful. Thus, it is ordinarily of no significance that the Employes may have abandoned similar claims on the property. See Award 5216.

In our analysis of the instant record, however, we detect facts which compel us to a different conclusion in the instant case. We are not prepared to accept Carrier's characterization of the grievance settlement letter of December 17, 1964 as an agreement and a legally binding contract under the Railway Labor Act. We do conclude, however, that it represents substantial evidence of the intent of the parties regarding the filling of temporary carmen vacancies. As we view the

the instant record this evidence is nowhere contradicted or refuted by the Organization, neither in its Ex Parte Submission nor in its Rebuttal.

In light of this omission and the peculiar facts and circumstances of this record we conclude that the Organization has failed to meet its burden of proving a violation of the cited Agreement provisions. Accordingly, the claims are dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of July, 1975.