

Award No. 1772

Docket No. 1698

2-UT-CM-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE UNION TERMINAL COMPANY—DALLAS

DISPUTE: CLAIM OF EMPLOYES: 1. That the Union Terminal Company violated the current agreements governing the working conditions and the vacations when vacation relief worker R. T. Burnett was assigned to work in the place of Carman Clyde Green on April 10, 11, 12, 13 and 14, 1953, who had just previously completed his vacation assignment on April 7.

2. That accordingly the Union Terminal Company be ordered to compensate four regularly assigned Carmen at the time and one-half rate, who are identified below:

a) O. R. Pogue in the amount of 16 hours or for one day each on April 10 and 14, 1953.

b) W. E. Cooper in the amount of 8 hours or for one day on April 11, 1953.

c) B. T. Petty in the amount of 8 hours or for one day on April 12, 1953.

d) B. B. Tucker in the amount of 8 hours or for one day on April 13, 1953.

EMPLOYES' STATEMENT OF FACTS: The Union Terminal Company, hereinafter referred to as the carrier, is a passenger train station located at Dallas, Texas, and eleven carmen are employed by it.

The Dallas Car Interchange and Inspection Bureau, hereinafter referred to as the bureau is a freight car interchange business and which is also located at Dallas. The carmen employed on both these properties as of October 1, 1952 are maintained on a joint seniority roster with the privilege of bidding vacancies or exercising seniority to acquire positions bulletined by either the carrier or the bureau, which is affirmed by the copy of Memorandum of Agreement submitted herewith and identified as Exhibit A.

The carrier made the election to temporarily hire R. T. Burnett on March 2, 1953 solely for vacation relief purposes of carmen whose vacation

Therefore, we respectfully request the Board to deny the claims as presented by System Federation No. 121, Railway Employees' Department, A. F. of L., as quoted on Page 1 of this ex parte submission.

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.

The parties to said dispute were given due notice of hearing thereon.

The carrier employed R. T. Burnett as a car inspector shortly before March 2, 1953. He began work on March 2, 1953, as a car inspector and continued in the employe of the carrier until May 11, 1953, when he resigned to accept employment elsewhere.

From March 2 to March 13, Burnett worked the position of Carman B. T. Petty who was on paid vacation. From March 16 to March 27, he worked the position of Carman George Shumate who was on paid vacation. From April 3 to April 7, he worked the position of Carman Clyde Green who was also on paid vacation during the period. From April 15 to April 26, he worked the position of Carman Charles Stewart who was likewise on paid vacation. No complaint is made of this employment of Burnett as it was entirely proper under the terms of the Vacation Agreement. Under the terms of that agreement, however, Burnett could not gain seniority rights with the carrier by working vacation relief assignments unless so used for more than sixty days in a calendar year. Rule 12(c), Vacation Agreement. Burnett did not, therefore, gain any seniority rights because of his working relief vacation assignments.

It appears, however, that Carman Clyde Green was granted a leave of absence on April 10, 11, 12, 13 and 14, 1953, without pay, it being no part of his vacation period. Burnett was used to fill Carman Green's position on these five days. The organization contends that the assigning of Burnett to this work was a violation of the agreement. The present claim is by carmen who claim they were entitled to the work.

It is the position of the carrier that Burnett was hired as a permanent employe. Witnesses present at the hiring state this to be the fact. On the other hand there was no vacancy among the positions filled by the eleven carmen employed by the carrier. No new position was created by bulletin. No opportunity was afforded other employes to exercise their seniority on any new position. The carrier's General Manager says that one of the regular assigned car inspectors had indicated a desire to retire and that he expected to assign Burnett to this vacancy. The car inspector in question changed his mind and retained his position. Burnett's employment was terminated by resignation as heretofore stated.

The carrier was not required to bulletin the five-day vacancy in question under applicable rules, it being less than at 15-day vacancy. Before Burnett began work on April 10, 1953, he had no seniority rights with the carrier. Carrier asserts that he acquired seniority rights on April 10, 1953, if not before. The question is: May the carrier assign a person having no seniority to a five-day vacancy which is not a paid vacation period?

We point out that Rule 5, current agreement, provides in part: "All permanent vacancies or new jobs created shall be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently." Carrier asserts

that Burnett was hired as a regular employe. We do not doubt the carrier's assertion that it intended to assign Burnett to a position about to become vacant. The intent of the carrier to hire Burnett as a regular employe was never consummated in accordance with the rules. Burnett was never assigned to any position by bulletin as the rule requires. He had no more right to work the five-days in question than a person hired off the street to do so. It is pointed out, also, that Burnett was laid off on March 29, 1953, without the advance notice required to be given to a regularly assigned employe. This is evidence that the carrier considered Burnett a vacation relief employe having no seniority rights rather than a regularly assigned employe having such rights. This is in accord with Rule 5, which requires permanent vacancies and new jobs to be bulletined. We do not think Burnett could become a regular employe until the carrier complied with the rule. The agreement was violated.

The claim will be sustained at the pro rata rate. The value of the work lost is the hours lost at the pro rata rate. Claimants worked no overtime, consequently the overtime rule does not come into play.

Carrier suggests that claimants lost no work because they worked their regular shifts. It could and should have been performed on an overtime or rest day basis. They lost the work which carrier had contracted to them and they are entitled to be paid therefore.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1954.