



Award No. 5734

Docket No. 5598

2-SOO-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

**SYSTEM FEDERATION NO. 66, RAILWAY EMPLOYEES'
DEPARTMENT, AFL - CIO
(CARMEN)**

SOO LINE RAILROAD COMPANY

PARTIES TO DISPUTE:

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carrier improperly assigned Carman Adam G. Ziegler to fill the vacation vacancy of Carman Erickson.
2. That accordingly the Carrier be ordered to compensate Carman Ziegler for 157¼ hours pay account of said violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Adam G. Ziegler, hereinafter referred to as the Claimant, is employed in his respective Craft and Class by the Soo Line Railroad Company, hereinafter referred to as the Carrier, in its Mechanical Department facilities at Harvey, North Dakota.

Claimant holds a regular assigned position, on the repair track, with assigned work days of Tuesday through Saturday with assigned hours of 8:00 A.M. to 4:30 P.M. and has Sunday and Monday as assigned rest days.

On date of claim there were six (6) Carmen employed at Harvey, North Dakota, as evidenced by seniority roster for 1966, submitted as Employees Exhibit A.

The first three (3) employes on roster held regular assigned positions, on the repair track, but did perform yard work when necessary.

The last three (3) employes on the roster, held regular assigned yard positions, but would perform work on the repair track, when work was not available in yard.

Carman Eric C. Erickson started his vacation on May 29, 1966 and it extended through June 16, 1966.

rights were violated. This claim is without merit, and Carrier prays that it be denied accordingly.

All data submitted in support of Carrier's position has been presented to the Employees' representative and made a part of the particular question in dispute.

(Exhibits not reproduced.)

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.

Carrier, at Harvey, North Dakota, has a terminal where train yard and engine house running repair and inspection forces are employed. This case is concerned with regularly assigned Carmen working at that point.

The Carmen's assignments at that point, in effect at the time of this claim with employes listed in the order of seniority, were:

"Name	Work Week	Hours
E. L. Frost	Monday-Friday	8:00 A.M.-4:30 P.M.
A. G. Ziegler	Tuesday-Saturday	8:00 A.M.-4:30 P.M.
E. J. Hanson	Friday-Tuesday	8:00 A.M.-4:30 P.M.
E. E. Erickson	Sunday-Thursday	4:00 P.M.-12:00 MN.
P. J. Bruner	Friday-Tuesday	12:00 MN.-8:00 A.M.
G. E. Hoffman	Wednesday Thursday	12:00 MN.-8:00 A.M.
	Friday-Saturday	4:00 P.M.-12:00 MN.
	Sunday	8:00 A.M.-4:30 P.M."

Carman Erickson, fourth in seniority, was scheduled to take his vacation from May 29 through June 16, 1966. Claimant Ziegler, second in seniority, was told prior to May 17, 1966, that he was being assigned to fill Erickson's position during Erickson's vacation absence.

The first three employes on the seniority list, which includes Claimant, worked the day shift, 8:00 A.M. to 4:30 P.M. Claimant's work days were Tuesday through Saturday, Sunday and Monday rest days. Hanson, third in seniority on the day shift, had work days Friday through Tuesday, Wednesday and Thursday rest days. Erickson had work days of Sunday through Thursday with hours 4:00 P.M. to 12:00 midnight, Friday and Saturday rest days.

Carrier determined that: (1) Claimant's position should be blanked during Erickson's vacation period, reducing the regular day shift force to two Carmen; and (2) Erickson's position was to be filled during his vacation absence by Claimant.

On May 17, 1966, Claimant wrote to Carrier that if a day shift Carman was to be forced to fill Erickson's position during his vacation absence Article 12(b) of the Vacation Agreement of December 17, 1941, contemplated the junior day shift Carman—Hanson—should be forced to take the assignment; else, the principle of seniority would be violated. He went on to say that if forced to fill Erickson's position he would file claim for one-half pay for each day he worked other than his regular assigned hours; and, claim time for each day he was not permitted to work his regular hours.

Carrier forced Claimant to fill Erickson's position during the vacation absence. Its justification of its action is that: (1) two Carmen are required on the Sunday day shift; (2) if Hanson, with regular Sunday assignment on the day shift, filled Erickson's assignment there would have been only one regularly assigned Carman on the Sunday day shift. (3) if Hanson was forced to fill the vacation absence Carrier would have been required to fill his regular assignment on Sundays with a regular Carman on his rest day at premium pay; (4) Carrier is not required to assume greater expense because of granting a vacation; and (5) the Vacation Agreement vests Carrier with substantial latitude in applying the principle of seniority in filling vacation absences.

The following provisions of Article 12 of the Vacation Agreement are pertinent in the resolution of this dispute:

"12(a): Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof." (Emphasis supplied.)

(b) . . . When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority." (Emphasis supplied.)

Referee Morse in his November 12, 1942, interpretations of the Vacation Agreement held that "greater expense" to a Carrier would be that in excess of what a vacationing employe would have earned had he been required to work during his vacation period—pro rata rate plus time and one-half rate for work during the period. The only showing by Carrier in this case is that if Hanson, the junior employe, instead of Claimant was assigned to fill the vacation absence the extent of "greater expense" would have been payment of pro rata rate plus time and one-half rate to a regular employe assigned to work Hanson's regularly assigned position on the Sundays within the vacation period. (NOTE: For Frost, number 1 on the seniority list, and Claimant, Sunday was a rest day in their regular assignment.) This, we find, would not have required Carrier to assume greater expense, within the contemplation of Article 12 (a), because of granting a vacation to Erickson. Carrier's defense predicated on Article 12(a) fails.

Article 12(b) does not grant Carrier unrestrained latitude in assign-

ing regular employes to fill vacation absences. An indispensable prescribed condition precedent to forcing a regular employe to fill a vacation absence is evidence that the Carrier has made "effort" . . . to observe the principle of seniority." This record lacks such evidence. Indeed, Carrier in effect admits that it did not "observe the principle of seniority." It says that had it done so it would have assumed "greater expense;" and, this being so, Article 12(a) exempts it from compliance with the requisite of Article 12(b): "effort will be made to observe the principle of seniority." We have found, *supra*, that had Carrier complied with the principle of seniority it would not have assumed "greater expense" within the contemplation of Article 12(b). Consequently, we will sustain paragraph 1 of the claim.

As to paragraph 2 of the claim: Carrier raised no issue on the property relative to the monetary compensation prayed for in paragraph 2 of the claim. It was content to rest its case on its allegation that its complained of actions did not violate the Vacation Agreement. We, having found violation of the Agreement, are consequently compelled to sustain paragraph 2 of the claim. See Opinion in Third Division Award No. 14162 on Remand from the United States District Court for the Northern District of Illinois Eastern Division, December 19, 1968.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.