

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement on April 19, 20, 21; May 13, 14, 18, 19, 20, 21, 22, 1978 when it transferred carmen from West Jacksonville Shops to Moncrief Shops, Jacksonville, Florida, to fill day-to-day vacancies.
2. That accordingly the Carrier be ordered to compensate carmen listed below.

J. H. Jackson	8 hrs. overtime	April 19, 1978
D. D. Moad	8 hrs. overtime	April 20, 1978
J. C. Bennett	8 hrs. overtime	April 21, 1978
V. Hodges	8 hrs. overtime	May 13, 1978
J. T. Proctor	8 hrs. overtime	May 14, 1978
J. F. Saunderson	8 hrs. overtime	May 14, 1978
W. J. Jones	3 hrs. overtime	May 18, 1978
T. Raulerson	6 hrs. overtime	May 18, 1978
A. B. Lynch	8 hrs. overtime	May 19, 1978
T. L. Markham	8 hrs. overtime	May 20, 1978
W. A. Chesser	8 hrs. overtime	May 20, 1978
L. R. Long	8 hrs. overtime	May 21, 1978
J. I. Joyce	8 hrs. overtime	May 22, 1978
R. R. Owens	8 hrs. overtime	May 14, 1978

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 organization contends that Rules 15 and particularly Section 6 of the Memorandum of Agreement dated March 28, 1968, was violated when Carrier transferred employees from the West Jacksonville Shops (the repair track) to the Moncrief facility (the train yard). Section 6 of the March 28, 1968, Agreement reads:

"6. At points where rosters are consolidated, as set forth in this agreement, it will not be the Carrier's intent to transfer employees from one shop to another to fill day-to-day vacancies which may arise."

The Organization filed with the Carrier during the handling of the claim on the property and as part of their submission, the following list which shows the name of the employee whose vacancy was filled and the name of the employee filling it.

4/19/78	R. M. Williams filled R. L. Tomlinson Job 7:00 a.m.-3:00 p.m.
4/20/78	J. L. Nutt filled R. L. Tomlinson Job 7:00 AM to 3:00 PM
4/21/78	J. L. Nutt filled R. L. Tomlinson Job 7:00 AM to 3:00 PM
5/13/78	E. J. Hodges filled P. C. Matthews Job 7:00 AM to 3:00 PM
5/14/78	E. J. Hodges filled P. C. Matthews Job 7:00 AM to 3:00 PM
5/14/78	J. F. Heinrich filled D. A. Gartenbush Job 3 PM to 11 PM
5/14/78	A. L. Meaker filled W. J. Jones Job 3:00 PM to 11:00 PM
5/18/78	J. F. Smith filled M. R. Collins Job 12 PM to 3 PM
5/18/78	W. G. Davis filled J. T. Proctor Job 5 PM to 11 PM
5/19/78	R. Bright filled M. R. Collins Job 7:00 AM to 3:00 PM
5/20/78	E. J. Hodges filled A. Sweat Job 7:00 AM to 3:00 PM
5/20/78	A. E. Gladden filled M. R. Collins Job 7:00 AM to 3:00 PM
5/21/78	E. J. Hodges filled M. R. Collins Job 7:00 AM to 3:00 PM
5/22/78	E. J. Hodges filled M. R. Collins Job 7:00 AM to 3:00 PM"

The Carrier does not dispute that the above list represents a list of vacancies at the Moncrief train yard nor do they dispute that the list indicates the employees from West Jacksonville who filled those vacancies. Nor is it disputed by the Carrier that employees were transferred from West Jacksonville to fill vacancies at the Moncrief train yard. The Carrier contends that it is system-wide past practice to use on-duty employees from one location to fill vacancies at another on an as needed basis within the same seniority point. The practice, they contend, existed at West Jacksonville and Moncrief as well. Carrier contends that there is nothing in the Agreement to restrict its right to do so and such was not the intent of the March 28, 1968, Agreement. The Carrier further argues that Second Division Award 7412 cited by the Organization is distinguished from the instant case. As they contend, the vacancies in question were not day to day vacancies. They further contend the vacancies were filled in accordance with the practice in effect for many years.

Regarding the list, the Organization makes the following statement:

"This is proof that vacancies did exist at Moncrief and were filled on day-to-day basis by employees of West Jacksonville."

The Organization also contends that prior to December 29, 1977, the types of vacancies in question were filled not by transferring employees from West Jacksonville but from the overtime board at Moncrief. The Claimant's in this case were first out on the overtime board at Moncrief train yard on the dates that the various vacancies were filled. In support of their position, the Organization directs our attention to Second Division Award 7412 which also dealt with Section 6 of the March 23, 1968 Agreement. Award 7412 involves another Organization who was also signatory to the agreement.

The central issue in this case was considered by the Board in Award 7412. We observe the following statement by the Board in that Award:

"The Board finds that Section 6 of the March 28, 1968 Agreement is clear, precise, and unambiguous to the extent that employees will not be moved from one shop to another shop within the same seniority district for the purpose of filling day-to-day vacancies.

The record before us shows that day-to-day vacancies did exist. Carrier cannot avoid its obligations under Section 6 merely on the basis that employees at the West Jacksonville Shops checked in and out at the West Jacksonville Shops. The record indicates that the employees were immediately transferred to Moncrief Shops after checking, and filled vacancies for eight (8) hour periods.

Therefore, we will sustain the Claim, but at straight time pay only, not time and one-half."

In interpreting Section 6 of the March 28, 1968 Agreement we fully agree with the statements made by the Board in Award 7412. Section 6 clearly prohibits the Carrier from transferring employees between shops at points covered by the Agreement for the purpose of filling day to day vacancies. The past practice arguments made by the Carrier cannot overcome the clear and unambiguous language of Section 6.

The remaining questions in context of this case regarding Section 6 are:
1) What is meant to "day-to-day vacancies" and 2) has the Union satisfied its burden as petitioner to show that the vacancies in question were in fact "day-to-day vacancies" as the term is used in the Agreement?

Regarding the question as to what is means by "day-to-day vacancies" the Board observes a long established maxim that words and phrases should be given their ordinary meaning unless otherwise specifically indicated by the Agreement. The meaning of the phrase is clear and self evident. A day to day vacancy is one known to exist only for one day at a time. A vacation vacancy, for instance, is not a day to day vacancy. Nor is an extended illness for a specified period of time of more than one day. We note in this regard that some of the statements on past practice submitted by the Employees recognize that vacation vacancies and vacancies due to extended illness at Moncrief have, at one time or another, been filled from West Jacksonville.

Regarding whether the Organization has met the burden of showing that the vacancies filled at Moncrief by West Jacksonville employees were day to day vacancies, we find they have partially fulfilled their burden. The Organization contends that all the vacancies on the list were day to day vacancies. However, the Carrier has refuted specifically that the vacancies of Tomlinson and Collins were not day to day vacancies due to the fact they were off because of extended illnesses. The remainder of the list, however, strongly suggests that the other vacancies filled from West Jacksonville were "day-to-day vacancies". We find no

effective refutation by the Carrier that the other vacancies on the list were anything but day to day vacancies. The Board finds that the Carrier properly filled the vacancies of Tomlinson and Collins. However, all the other vacancies listed in the record have been shown by the Organization to be day-to-day vacancies as the Carrier has not presented evidence to refute this. As a result, the Carrier violated the Agreement when the remaining vacancies were filled by transferring employees.

There is another aspect of this case that must be treated. The Organization has also made the argument that a violation of Section 6 of the agreement occurred when employees from West Jacksonville were transferred on a "day to day basis" to Moncrief. This argument in reality is distinct from an argument that men were sent to fill "day to day vacancies". To say that the Carrier cannot fill "day to day vacancies" by transferring employees is much different than saying the Carrier cannot fill vacancies on a "day to day basis". When a vacancy is filled on a "day to day basis" it does not necessarily mean that it is a "day to day vacancy". It is our opinion that the Carrier does not violate Section 6 when they transfer employees on a day to day basis to fill vacancies such as extended illnesses or vacations. The Agreement does not restrict the Carrier in its method of filling the vacancies; it only restricts them in the kinds of vacancies that they can fill by transferring employees between locations within a seniority point. Or, in other words, it doesn't dictate how long an employee must be transferred when filling other than day to day vacancies. It does not state or prevent the Carrier, for instance, from transferring one employee to fill the first day of a five-day vacation vacancy and a different employee the second day, etc. What it does prevent is the Carrier from transferring employees to fill a vacancy that may arise on a day to day basis.

In conclusion, the Carrier violated the Agreement when they filled day to day vacancies by transferring employees from West Jacksonville to Moncrief. The proper claimants in this case are those filling vacancies other than Tomlinson and Collins' vacancies and can be determined by comparing the statement of claim against the list of vacancies. Therefore, the following claimants are entitled to the following compensation but only at the straight time rate of pay:

V. Hodges	8 hrs.	May 13, 1978
J. T. Proctor	8 hrs.	May 14, 1978
J. F. Saunderson	8 hrs.	May 14, 1978
T. Raulerson	6 hrs.	May 18, 1978
T. L. Markham	8 hrs.	May 20, 1978
R. R. Owens	8 hrs.	May 14, 1978

Our finding regarding the remedy follows that in Award 7412.

A W A R D

Claim sustained to the extent indicated in the Findings.

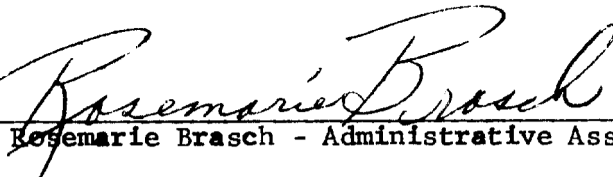
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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Award No. 8980
Docket No. 8996
2-SCL-CM-'82

Attest: Executive Secretary
National Railroad Adjustment Board

By

A handwritten signature in cursive script, reading "Rosemarie Brasch", written over a horizontal line.

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March, 1982.