

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
( The Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman R. E. Bennett's service rights and rules of the controlling agreement were violated account not being permitted to fill vacancy of Carman R. J. Wilmer after Bennett made request to fill said vacancy, in violation of Shop Craft Rules 27, 27 1/2 and 188.
2. Accordingly, Bennett is entitled to be compensated for 40 hours at 25 cents per hour (Lead Carmen's differential rate). Also, that when other regular assigned employes make proper application to fill vacancies that they will be permitted to fill such vacancies and furloughed employes signed up to work under provisions of Rule 27 1/2 will be placed on the last vacancies to be filled.

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 employes 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 essential facts in this case are clear and straightforward. A Lead Carman was granted five days vacation from April 29, 1980 through May 3, 1980. Claimant desired to fill this position for the duration of the vacation period and filed a request on April 22, 1980 to transfer to the Lead Carman's position. Carrier denied his request and used a furloughed employee on what is termed a day-to-day basis, and the instant claim was filed on June 2, 1980.

In support of the petition, Organization asserts that Carrier violated Rules 27, 27 1/2 and 188 of the Shop Crafts Schedule Agreement and the manifest intent of Article 12(b) of the National Vacation Agreement when it disregarded the observance of the seniority principle in filling the position. It contends that Rule 27 1/2, which governs and addresses the employment utilization of furloughed employees, does not supersede the rules or practices regulating the assignment of regular employees on preferred vacancies. It avers that since he was a regular employee and the assignment was a preferred position, he should have been assigned to fill it. It cites as supportive of its position Second Division Award Nos. 5365 and 5734.

Carrier argues that since Rule 12(b) of the Vacation Agreement does not consider a vacation absence as a vacancy, the application of Rule 27 1/2 is moot. It asserts that Second Division Award No. 2681 is dispositive on this point since the Board held that a vacation absence did not constitute a vacant position under Article 12(b) of the Vacation Agreement. It avers that this issue had been previously resolved on the property when the Organization failed to appeal Carrier's September 21, 1979 denial of a similar claim. Moreover, it contends that even though Article 12(b) requires that an effort will be made to observe seniority when filling the position of a vacationing employee, this requirement is admonitory rather than a contractual obligation. (See Second Division Award No. 4351.) It maintains that there are no Agreement rules which require that an employee who requests to fill a vacation absence must be accorded the position merely because he filed a request.

In considering this case, the Board concurs with Carrier's position. Careful analysis of the cited rules does not reveal that a vacation absence is a vacant position, as that term is defined and understood by the controlling Schedule Agreement and Article 12(b) of the National Vacation Agreement. Consequently, Rule 27 1/2 is inapplicable to these facts. There is some merit to the Organization's position that an effort to observe seniority should be made when a decision is reached to fill a vacationing employee's position, but this effort is not a mandatory, inflexible requirement that only the most seniority-eligible employee will be assigned to the position.

In the case herein, Carrier considered Claimant's request to fill the position within the context of its admonitory obligation to observe the principle of seniority, but it was not forced-required to assign him to the position. In fact by extension the Organization apparently accepted this interpretative position when it did not challenge Carrier's previous denial of a similar grievance. There is nothing in the Schedule Rules Agreement nor the Vacation Agreement supporting Organization's assertions and thus, we must deny the claim.

A W A R D

Claim denied.

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Award No. 10463  
Docket No. 9584  
2-C&O-CM-'85

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1985.