

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12034
Docket No. 11640
91-2-88-2-160

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

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Southern Railway Company

STATEMENT OF CLAIM:

1. That under the current Agreement, the carrier improperly assigned vacation work to other than a Vacation Relief Carman from April 10 through 16, 1987.

2. That accordingly, the Carrier be ordered to pay Carman N. R. Houser, Knoxville, Tennessee, five (5) days' pay at the pro rata rate and in the future assign vacation relief work to the assigned Vacation Relief Carman at Coster Shop.

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.

At the time of this Claim, Claimant was employed by the Carrier as a vacation relief carman at the Carrier's Coster Shop in Knoxville, Tennessee. Carman C. Strader was a fork truck driver at the Coster Shop. From April 10 through April 16, 1987, Carman Strader was on a scheduled vacation. Claimant was available and requested to work Strader's position while Strader was on vacation. However, the Organization claims that the Carrier used another carman, J. D. Wells, to cover Strader's position, and assigned yet another carman, J. Law, to "backfill" Wells' regular position in the interim. According to the Organization, the Carrier thus violated Article 6 of the National Vacation Agreement, which provides:

"6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

The Carrier denies that it filled Strader's position during his vacation. According to the Carrier, Strader's position was blanked during the period of his vacation while the remaining carmen assigned to the Material Department at Coster Shop performed normal duties. The Carrier specifically maintains that Carman J. D. Wells performed his regular duties during that week. Wells was assigned to the Carrier's General Forces in the Material Department performing a variety of duties including occasionally driving a fork truck. The Carrier acknowledges that Wells operated a fork truck during Strader's vacation but denies that he did so full time. Furthermore, the Carrier points out that it retains the discretion under Article 6 to fill or not fill vacation positions. The Carrier relies on the language of Article 6 stating that a vacation relief worker need not be assigned as long as the failure to assign one does not burden the employees remaining on the job or the vacationing employee after he returns.

The Organization does not dispute the Carrier's discretion to leave a vacationing employee's position unfilled under the circumstances outlined in Article 6. However, throughout the consideration of this Claim on the property, the Organization insisted that the Carrier had filled Strader's position with Wells, as evidenced by the nature of the work Wells did that week and the fact that Wells regular duties had to be covered by another employee. As the Organization wrote in reply to the Carrier's rejection of the Claim on the property:

"The fact remains solid that the Carrier assigned Carman J. D. Wells, who is not a vacation relief worker to the fork truck that was driven by Carman Strader. He was also assigned the duties normally assigned to this job in supplying material to the three (3) repair tracks at Coster Shop. During this week Carman Wells did not perform his regular duties. The Carrier chose to fill Carman Wells job with another employee. Carman J. Law was assigned to the duties normally assigned to Carman Wells."

To this the Carrier responds that Carman Law, like Wells, was assigned to General Forces and was regularly utilized to perform tasks like those he performed the week of Strader's vacation.

The Organization must prove its Claim that Article 6 was violated. It must do so by producing evidence that the Carrier's failure to assign a vacation relief carman resulted in a "burden" to the other employees or to Strader on his return. The Third Division has reasoned that an employee is not "burdened" in this sense unless he is "overtaxed" and not reasonably able to do the work asked of him. Third Division Award 14397. While the Organization has asserted that Wells assumed duties that would have fallen to Strader, and that Wells' own duties in turn were assumed by Law, the Organization has not produced evidence that, even if this is so, the employees' respective assumptions of work operated to "overtax" either employee.

Article 6 gives the Carrier the freedom to blank a vacationing employee's position and not assign a vacation relief worker if the work can be left undone or if the remaining employees can cover the work without being "burdened" or "overtaxed." Therefore, it is not enough for the Organization to assert, even if it is without contradiction, that work was sequentially redistributed in order to temporarily do without Strader's position. The Organization's failure to also show that these arrangements imposed a "burden" on the employees is necessarily fatal to its claim of a violation of Article 6.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of May 1991.