Award No. 4351
Docket No. 4221
2-SP(PL)-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier's arbitrary unauthorized use of Machinist A. Tibbedeaux employed at Carrier's Roseville Diesel Shop, to fill vacation vacancy of Machinist R. Cano, Jr., at Sacramento Diesel Shop, during the period April 2-16, 1961, was improper, in violation of the collective bargaining contract.

2. That accordingly, the Carrier be ordered to additionally compensate Machinists A. J. Nassi and V. T. Andreatta (hereinafter referred to as claimants) at the overtime rate of pay, for each date on which Machinist A. Tibbedeaux was used to fill vacation vacancies during the period April 2-16, 1961 at Sacramento Diesel Shop, to be proportionately divided between both claimants.

EMPLOYES' STATEMENT OF FACTS: Machinist A. Tibbedeaux is regularly assigned to work at carrier's Roseville Diesel Shop, and holds no seniority or any other service rights at any other point on the system. There is no dispute in the record regarding this fact. Claimants hold regular assignments as machinists at carrier's Sacramento Diesel Shop.

Carrier's Roseville Diesel Shop and its Sacramento Diesel Shop, are each separate and distinct seniority points. Seniority of employes of each class in their respective craft, is confined by agreement stipulation to the point where they are employed. No dispute appears in the record regarding this fact.

No provision of the current agreement authorizes the hiring of employes on a temporary basis, whether it be for vacation relief or other purposes. The record contains no dispute regarding this fact.

This dispute has been handled up to and with the highest carrier's representative designated to handle such matters, all of whom have declined adjustment.

for filling Machinist Waggoner's vacancy at Sacramento, even if such position could actually be considered as belonging to Machinist Cano at any time, which the carrier denies, it would still have been fully proper in accordance with the foregoing to have used Machinist Tibbedeaux under the provisions of Rule 14 of the current agreement and the vacation agreement of December 17, 1941, as revised, to fill Machinist Cano's annual scheduled vacation vacancy during the period of the instant claim, which is as stated in carrier's correspondence and this submission, and not as claimed by the petitioner.

Under all the circumstances involved Machinist Waggoner was on an approved leave of absence and entitled to return to his former position on expiration of such leave, Machinist Cano was used in accordance with agreement provisions and the practice in effect for many years to fill Machinist Waggoner's temporary vacancy, and as such, Machinist Cano was not required to relinquish his established seniority at Roseville while in such status. In subsequent resignation of Machinist Waggoner, Machinist Cano elected to retain seniority at Roseville in lieu of accepting recall to Sacramento on a permanent assignment basis in position vacated by Machinist Waggoner's resignation. Machinist Tibbedeaux was used to fill Machinist Cano's scheduled vacation vacancy on the position in question and returned to Roseville on his regular assignment thereafter. Machinist Waggoner's vacancy at Sacramento was subsequently filled by a furloughed machinist from another location following Mr. Waggoner's resignation from service.

In the circumstances obtaining in this case it is obvious that Machinist Tibbedeaux was properly sent to Sacramento, an outlying point in relation to Roseville, under the provisions of Rule 14, to fill vacation vacancy (temporary) of Machinist Cano at that point. Claimants in this case were in no way affected by reason of such handling and thus have no valid claim.

Even if there were merit to the position of petitioner in this case (which carrier denies), there is no agreement or other authority to support the payment claimed in its present form, i.e., the earnings of Machinist Tibbedeaux for each date used to fill involved vacation vacancy "* * * to be proportionately divided between both claimants". Additionally, insofar as the claim for overtime rate is concerned, again assuming a basis for claim existed, this Division has on numerous occasions held that the contractual right to perform work is not the equivalent of work performed—see this Division's Awards 2417, 2956 and 3259 and the Awards cited therein.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it be denied.

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 were given due notice of hearing thereon.

Effective February 12, 1961, Waggoner, the regularly assigned relief lead machinist at the carrier's Sacramento trainyard enginehouse, was granted a 90-day leave of absence. Machinist Cano, who had been laid off at Sacramento and was working at Roseville, was sent to work Waggoner's position while he was on vacation. Cano worked the position from February 22 through May 9, except for the period from April 2 to 14, when he was on his own scheduled vacation. During Cano's vacation period Machinist Tibbedeaux, who had been working at Roseville, was used to fill the Sacramento position. Waggoner resigned, effective May 1, and his position was bulletined on April 25 and was bid in and filled on May 3, by Machinist Andreatta, one of the claimants.

The organization says that when Tibbedeaux, regularly assigned at Roseville, was used to fill the Sacramento position, the carrier violated Rule 32, which provides that: "Seniority of employes of each class in a craft, shall be confined to the point where they are employed". For this alleged violation claim is made on behalf of Nassi and Andreatta, the senior machinists at Sacramento, for compensation from April 2 to 14, at overtime rate, such remuneration to be proportionately divided between them. The employes call attention to the fact Sacramento and Roseville are in separate seniority districts and that Tibbedeaux had no seniority rights at Sacramento.

The carrier takes the position that Tibbedeaux was properly used by virtue of Rule 14, which provides, in part, that, "Regularly assigned employes sent out to temporarily fill vacancies at outlying point or shop or sent out on a temporary transfer to an outlying point or shop, will be paid * * *" (etc.)

The first obligation of this Board is to construe, interpret, harmonize and apply Rules, 32 and 14, so as to avoid a conflict, give full force and effect to both and do no violence to either, if that can be consistently done; and we believe it can.

Rule 32 deals, particularly, with the subject of seniority rosters, as is indicated by the fact that it is so entitled. It enumerates ten craft classes and directs that rosters shall be maintained for each. In the concluding sentence provision is made for their annual revision, for posting and correcting, and for copies to be furnished to local and general chairmen. It is of significance that there are other Rules, (19 and 31), that deal especially with how and when seniority shall be exercised. This leads us to the conclusion that Rule 32 does not have the broad application that the organization claims. Rather, we regard it as being procedural, governing the manner in which seniority rosters shall be set up and maintained.

On the other hand, Rule 14 has direct application to the kind of a problem with respect to which we are presently confronted. It deals, specifically, with vacancies that occur when the regular occupants of positions are on vacations; and the propriety of regularly assigned employes being sent to fill such vacancies at outlying points.

This is a case, we think, where the specific must prevail over the general, and our conclusion is buttressed by Article 12 (b) of the Vacation Agreement of December 17, 1941, where it is said that absences from duty of employes exercising vacation privileges will not constitute vacancies in their positions under any agreement. The concluding clause of said Article 12 (b) that, "effort

will be made to observe the principle of seniority", is an admonition, rather than a contractual obligation.

As we interpret the aforementioned Rules, they are not in conflict, and as a consequence we find no basis for the claim that the carrier violated the Agreement in using Machinist Tibbedeaux to fill the vacancy in question.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1963.