

Award No. 4429

Docket No. 4366

2-SLSF-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current Vacation Agreement the Carrier improperly assigned a junior electrician to fill a vacation position on the first shift.

2. That accordingly, the Carrier be ordered to additionally compensate Electrician A. O. Odom in the amount of eight (8) hours pay at the applicable rate for service performed from 8:00 A. M. to 4:00 P. M., August 10, 11 and 14, 1961.

EMPLOYEES STATEMENT OF FACTS: Electrician O. N. Stockton, employed by the carrier at Amory, Miss. on the first shift with hours from 8:00 A. M. to 4:00 P. M., with Saturday and Sunday as rest days, was scheduled to take his annual earned vacation from August 8, to August 19, 1961, during which time the carrier in place of assigning a relief vacation electrician, elected to work Electrician H. K. Boozer from 4:00 P. M. to 12:00 midnight shift with a seniority date of February 4, 1951, on the vacation vacancy.

Electrician A. O. Odom, hereinafter referred to as the claimant, with a seniority date of July 13, 1950, is employed at Amory, Miss., with the assigned hours of 4:00 P. M. to 12:00 midnight on Thursday and Friday, and 8:00 A. M. to 4:00 P. M. on Saturday, Sunday and Monday, with rest days on Tuesday and Wednesday, was denied the right to exercise his seniority and work this vacation vacancy.

This dispute was processed on the property from the bottom to the highest officer of the carrier designated to handle disputes as provided for in the controlling agreement.

POSITION OF EMPLOYEES: The carrier maintains and operates a diesel shop at Amory, Mississippi to service diesel electric locomotives used in freight and passenger service. There are two (2) electricians on the first shift, two (2) on the second shift and one (1) on the third shift.

This rule will not apply when shifts are changed in the exercising of seniority or exchanged at the request of the employes involved.

“(Taken from Article II, Section 3(n), of March 19, 1949 Conference Committee Agreement). Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Employes filling such relief assignments will not be paid overtime rate upon change of shift for shift changes included in the regular relief assignments.”

When the occupant of position no. 553 was moved from the second to the first shift he was paid time and one-half for the first shift he worked and he was paid time and one-half for the first shift he worked upon return to the second shift. Except as hereinbefore mentioned, the position of the vacationing employe was blanked. The occupant of position no. 553 was not moved to the first shift to fill a vacation vacancy. Had he been filling a vacation vacancy, it would have been unnecessary to allow time and one-half for the first shift he worked going to and returning from the first shift. It was said in Award 2083 (Douglass):

“The question now before this Board has been passed on in Awards 1806 and 1807. The Second Division of the National Railroad Adjustment Board, as now constituted, concludes that an employe, changing shifts to fill the position of a vacationing employe, is not entitled to time and one-half for the first shift he works in filling said position, nor is he entitled to time and one-half for the first shift he works upon return to his position.”

Had the carrier been filling a vacation vacancy in this instance, time and one-half would not have been allowed the occupant of position no. 553.

The claimant worked the regular hours of his relief assignment on each of the claim dates and suffered no monetary loss as a result of the incident complained of.

Neither the rules of the working agreement nor article 12(b) of the vacation agreement has been violated by the carrier and the Board is requested to deny the employes' claim in its entirety.

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.

Electrician A. O. Odom, the Claimant, with a seniority date of July 13, 1950, was employed at the Carrier's Diesel Shop at Amory, Mississippi, with assigned hours of 4:00 P. M. to Midnight on Thursday and Friday and from 8:00 A. M. to 4:00 P. M. on Saturday, Sunday and Monday.

On Tuesday, August 8, 1961, first shift Electrician O. M. Stockton began his vacation. As a regular vacation relief employe was not available the Carrier assigned the Claimant, on his rest days, August 8th and 9th, to fill Mr. Stockton's vacation vacancy. For this work the Claimant was paid at the appropriate rate of time and one-half.

However, on August 10th, 11th and 14th, the Carrier assigned Electrician H. K. Boozer, whose seniority date is February 4, 1951, to fill Mr. Stockton's vacation vacancy. The Claimant protested the Carrier's action both orally and in writing but both his protests were denied by Mr. C. V. Knox. Immediately following the protests, however, Mr. Knox returned Mr. Boozer to his regular second shift assignment and blanked the balance of Mr. Stockton's vacation vacancy.

The Organization claims the Carrier's action violated Article 12, Paragraph B, of the Vacation Agreement.

The Carrier, on the other hand, contends its position is supported by Rule 13—the Change of Shift Rule—of the current agreement and that Rule is controlling.

Rule 13 reads in part as follows:

“Employes changed from one shift to another will be paid overtime rate for the first shift of each change. Employes working two shifts or more on a new shift shall be considered transferred. This rule will not apply when shifts are changed in the exercising of seniority or exchanged at the request of the employes involved.”

Article 12, Paragraph B, of the Vacation Agreement reads as follows:

“As employes exercising their vacation privileges will be compensated under this agreement during their absence or vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute ‘vacancies’ in their positions under any agreement. When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority.”

A trenchant analysis and evaluation of the pertinent rules and the entire record before us lead the Board to conclude that the weight of the evidence supports the Organization's position.

The record sustains the conclusion that the position in question was a vacation vacancy and is, therefore, governed by Article 12, Paragraph B and not by Rule 13.

To argue that the word “effort” is an “admonition” rather than an integral part of a contractual obligation is to reduce the seniority aspect of Article 12, Paragraph B, to a nullity and to undermine the force and effectiveness of the entire Agreement.

Accordingly, the Board rules that the Carrier must compensate the Claimant for eight hours at the pro rata rate of pay for both August 10th and 11th, 1961. No provision, however, is made for the other claim date, namely August 14, 1961, because the Claimant worked his regularly assigned 8:00 A. M. to 4:00 P. M. shift on that day.

AWARD

Claim sustained in keeping with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.