Award No. 5365
Docket No. 5225
2-PULL-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Pullman Company violated the controlling agreement when they deliberately and arbitrarily recalled a junior employe to Mrs. Leola Edwards, to work a vacation vacancy position from October 3 to October 20, 1965.

2. That accordingly, the Pullman Company be required to compensate Mrs. Leola Edwards eight (8) hours' pay per day, five days per week at the applicable rate of pay, for three weeks commencing October 3, 1965 account the violation.

EMPLOYES' STATEMENT OF FACTS: The Pullman Company, hereinafter referred to as the carrier, maintains an Agency at Seattle, Washington, where Mrs. Leola Edwards, hereinafter referred to as the claimant, is employed as a car cleaner.

At time of violation claimant was on furlough.

Effective October 3, 1965, car cleaner Mrs. V. G. Grant began her three weeks annual vacation for 1965.

Carrier deemed it necessary to fill the vacation vacancy of coach cleaner Mrs. V. G. Grant from October 3, 1965 through October 20, 1965, both dates inclusive.

Carrier in filling vacancy failed to observe the principle of seniority by calling male coach cleaner C. T. Ransom, with seniority date of July 26, 1958, in preference to claimant with a seniority date of June 20, 1944.

Claim was filed with proper officer of the Carrier under date of October 23, 1965 (submitted as Employes' Exhibit A), and subsequently handled up to and including the highest officer of the Carrier designated to handle such claims, all of whom have declined to make satisfactory adjustment.

CONCLUSION

In this submission the Company has shown that Rules 22, 24 and 89 of the Agreement are not applicable to this dispute where a vacation relief worker is required to perform vacation relief work during the absence of a car cleaner on her scheduled vacation. Also, the Company has shown that Article 17 of the Vacation Agreement sets forth the principle controlling in this dispute. Further, the Company has shown that local management attempted to cooperate with the local organization and arranging for the necessary performance of work in the district during the vacation of Car Cleaner Grant. Finally, the Company has shown the Organization has not brought forward sufficient facts to prove its claim that there was any violation of any contract provision in the matter complained of.

Inasmuch as there has been no violation of Rules 22, 24, 89, or of any other provision of any applicable Agreement, the Organization's claim in this case is without merit, and it should be denied.

All data presented herewith in support of the Company's position have heretofore been submitted in substance to the employe or his representative and made a part of this dispute.

Oral hearing is not requested.

(Exhibits not reproduced.)

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.

On October 3, 1965, Car Cleaner Mrs. V. G. Grant began her three weeks' annual vacation. Carrier then called Coach Cleaner C. T. Ransom (seniority date July 26, 1958) in preference to claimant Mrs. Leola Edwards (seniority date June 20, 1944) to work in place of Mrs. V. G. Grant during her vacation.

Carrier contends the Agreement was not violated because:

(1) Local management had reached an agreement with the local organization to call junior employe;

(2) It had been the custom for many years to utilize a male employe to fill this particular vacation vacancy; and

(3) It had followed the procedure required in Article 17 of the Vacation Agreement, which is:

"17. As employes exercising their vacation privileges will be compensated under this Agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions; therefore, the positions shall not be bulletined. When the position of a vacationing employe is to be filled and regular vacation relief employe is not utilized, effort will be made to observe the principle of seniority."

The Organization categorically refutes Carrier's first contention with Exhibit D of the Organization's submission, which is:

"January 5, 1966

To Whom It May Concern:

This is to certify that we the Local Protective Board Committee of Tawassacs Lodge No. 866, located at Seattle, Washington, do hereby testify that we have at no time given management permission to recall from furlough any worker, for filling any vacancy or relief position, out of seniority order.

Any statement made by management at any time to the contrary is untrue, as we have at all time advised management that seniority must be recognized, in the recalling of any worker from furlough.

This statement is made over the seal of Tawassacs Lodge No. 866.

Committee:

/s/ C. E. Hanson, Chairman
/s/ P. A. Johnson, Member,
/s/ C. C. Sawyer, Member"

The organization further contends that Carrier violated Rules 22, 23, 24, 89 and Article 17 of the Agreement. The pertinent part of Rule 22 is:

"Rule 22. Date and Application of Seniority.

(a) The principle of Seniority is sound and shall be adhered to."

This Board finds: that Rule 23 pertains to vacancies that require bulletining procedure; that Rule 24 is concerned with reduction or restoration of forces; that Rule 89 also pertains to restoration of forces in referring to Rule 24; and that, therefore, Rules 23, 24 and 89 of the Agreement are not applicable to the instant dispute.

This Board further finds that there is no merit to Carrier's first or second contentions. Carrier's first contention has been adequately refuted by the Organization's Exhibit D. We will follow Award 2167 (Fourth Division); practice of long standing alone does not establish a rule, once this practice is challenged, as is the case here.

This Board finds that Article 17, as quoted above, is almost identical to Article 12(b) of the National Vacation Agreement of December 17, 1941 between certain Eastern, Western and Southeastern Carriers and their employes represented by the fourteen cooperating Railroad Labor Organizations. Referee Wayne L. Morse decided that Carrier's contention concerning this Article 12(b) could not be sustained thereby, by inference, upholding Labor's contention that principles of Seniority under Article 12(b) must be followed.

This Board finds in the instant dispute, Carrier merely alleges that it followed the procedure set out in Article 17 of the Vacation Agreement. The record is void of any evidence that effort was made to observe the principle of seniority as required. Naked allegations without supporting evidence are nullities, and will not be considered by this Board. The record before us is completely void of even an unsupported assertion that this claimant was not qualified, capable, ready and able to fill the vacationing employe's assignment. The principle of Seniority must be observed.

We, therefore, conclude that Rule 22 of the Agreement and Article 17 of the Vacation Agreement have been violated. This conclusion is in accordance with Award 3578 (Bailer) and Award 10319 (McDermott–3rd Div. Supp.).

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1968.

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