



Award No. 6093

Docket No. 5803

2-C&O-CM-70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the service rights of carman J. P. Rayburn, first out on the carmen's overtime board and provisions of "Letter of Understanding, dated July 6, 1961, File: SFG-79," were violated September 24, 1967 account carman Robert Morris filled a five (5) day vacation vacancy September 18 through September 22, 1967, observed one rest day, September 23, then commenced filling another vacation vacancy September 24, 1967.

2. Accordingly Rayburn is entitled to be compensated eight (8) hours at carmen's applicable time and one-half (1½) rate in lieu of said violation.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company hereinafter referred to as the carrier owns and operates a large facility at Ashland, Kentucky consisting of diesel house, passenger coach shop and yards, shop track and transportation yards where cars are switched, repaired, classified and cars are interchanged from other roads to the C & O lines, 24 hours a day, 7 days each week, where a large number of carmen are employed and hold seniority under Rule 31 of the shop crafts agreement.

Carman Robert Morris regularly assigned vacation relief employe by award of bulletin #227 was assigned to work the vacation vacancy of carman E. C. Collier from September 18 through September 22, 1967, with rest days of September 23 and 24, 1967. Morris observed September 23 as a rest day, however, instead of observing September 24 as the second rest day, carrier assigned Morris to fill carman Carl Carpenter's vacation vacancy commencing September 24, 1967. As result of this action, time claim was submitted by the local chairman in behalf of carman J. P. Rayburn hereinafter referred to as the claimant, first out on the carmen's overtime call list, due to Morris not observing September 24, 1968 as a rest day in violation of "Letter of Understanding, dated July 6, 1961, File: SFG-79."

The above is the only claim of this type received since the July 7, 1961, understanding until receipt of the Rayburn claim in 1967. The electrical claim referred to was not appealed.

The letter of understanding on which the employes base the instant claim placed a restriction upon the availability of a regularly assigned employe, not an employe holding vacation relief assignment, but the letter agreement makes no provision for any penalty payment, even if a regularly assigned employe was used on a day on which he was unavailable due to the operation of the understanding.

The position which the employes are taking in the instant case is contrary to position previously taken and in which a payment was made. There is claim of a vacation relief carman, A. D. Hale, for payment, September 11, 1967, when not used to fill a vacation vacancy after being off duty one day, having previously worked September 5 to 9, off September 10, and claims that he should have been used September 11, for a vacation vacancy. It will be noted that the carrier allowed the vacation relief employe eight hours at straight time rate on the basis that he was held off a vacation assignment and that it was improper to use an employe from the overtime board to fill the vacation vacancy. In other words, in the Hale case the Employes took the position that the vacation relief job was entitled to fill all vacation vacancies while in the Rayburn case their position is just the opposite contending that the vacation relief employe should not have been used on a vacation vacancy under the same circumstances.

The employes are not consistent in their claim and since it has been shown that the Rayburn claim was in keeping with past handling, carrier asks that the claim of the Employes be denied 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 dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

A regularly assigned vacation relief carman who is used to work a vacation vacancy from September 18 through September 22, 1967, and after only one day of rest (in lieu of observing the two rest days of the assignment on which he furnished vacation relief) is thereupon assigned to fill another vacation vacancy beginning September 24, for five days September 24, through September 28, does not thereby violate the letter agreement of July 6, 1961.

That is so because a vacation relief carman filling a vacation vacancy is not "used to fill a vacation vacancy on another position" in the sense in which this phrase appears in the second paragraph of the said letter agreement. Accordingly, it must be held that this category of employe is neither dealt with nor covered by the said July 6, 1961 understanding.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.