

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement on June 7, 8, 9, 10, 11, 12, 16, 1978 and July 1, 2, 6, 7, 8, 1978 when it transferred carmen from West Jacksonville Shops to Moncrief Shops, Jacksonville, Florida, to fill day-to-day vacancies.
2. That accordingly the Carrier be ordered to compensate carmen listed below.

C. W. Sawyer	8 hrs. overtime	June 7, 1978
B. L. Lundy	8 hrs. overtime	June 8, 1978
P. C. Matthews	8 hrs. overtime	June 8, 1978
J. B. Lord	8 hrs. overtime	June 8, 1978
J. C. Gamel	8 hrs. overtime	June 9, 1978
C. W. Jones	8 hrs. overtime	June 9, 1978
J. H. Jackson	8 hrs. overtime	June 9, 1978
J. C. Bennett	8 hrs. overtime	June 10, 1978
V. Hodges	8 hrs. overtime	June 11, 1978
J. Saunderson	8 hrs. overtime	June 11, 1978
A. B. Lynch	8 hrs. overtime	June 11, 1978
T. L. Markham	8 hrs. overtime	June 11, 1978
W. A. Chesser	8 hrs. overtime	June 12, 1978
T. Raulerson	8 hrs. overtime	June 12, 1978
R. R. Owens	8 hrs. overtime	June 16, 1978
D. A. Gartenbush	8 hrs. overtime	July 1, 1978
J. I. Joyce	8 hrs. overtime	July 2, 1978
C. W. Sawyer	8 hrs. overtime	July 6, 1978
B. L. Lundy	8 hrs. overtime	July 7, 1978
W. G. Davis	8 hrs. overtime	July 8, 1978

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.

The instant dispute involves the interpretation and application of the March 28, 1968 Memorandum of Agreement. The central issues and arguments involving the Memorandum have been recently considered by the Board in Second Division Award 7412 and Award 8980. The Board in 7412 stated that the Memorandum was clear and unambiguous in that the Carrier could not transfer employees between shops for the purpose of filling "day to day vacancies". In Award 8980 we added that day to day vacancies were those known to exist only on a day to day basis. For example, vacation vacancies and extended illness known to exist for more than one day's duration are not "day to day vacancies". We held it was a violation of the agreement to fill day to day vacancies by transferring employees but that it was not a violation of the agreement for the Carrier to fill other than day to day vacancies (i.e. vacations and extended illnesses) on a day to day basis. We also held that in order to sustain their burden of proof, the employees must show that the vacancies, filled by the Carrier with transferred employees, are "day to day vacancies".

In the instant case, the Carrier has established that the vacancies of Mr. L. R. Long, Mr. D. A. Gartenbush and Mr. R. Collins were not "day to day vacancies". In this regard we observe the following statement made by the Master Mechanic in the handling of the grievance:

"It is also noted in your letter that some of these vacancies were not day-to-day vacancies. Mr. Long's first day off was June 4, 1978, and as of this date he has not been released by the doctor to return to work. Mr. Collins was absent account of sickness for several days. Also, Mr. D. A. Gartenbush was absent for several consecutive days."

In regard to the remainder of the vacancies, we find no denial or refutation by the Carrier of the Organization's contention that they were day to day vacancies. The filling of the remaining vacancies by transferring employees from West Jacksonville was a violation of the Agreement. In view thereof, the following Claimants' are entitled to the following pay for the following dates but only at the straight time rate of pay.

B. L. Lundy	8 hrs.	June 8, 1978
J. C. Gamel	8 hrs.	June 9, 1978
C. W. Jones	8 hrs.	June 9, 1978
V. Hodges	8 hrs.	June 11, 1978
A. B. Lynch	8 hrs.	June 11, 1978
W. A. Chesser	8 hrs.	June 12, 1978
R. R. Owens	8 hrs.	June 16, 1978
D. A. Gartenbush	8 hrs.	July 1, 1978

A W A R D

Claim sustained to the extent indicated in the findings.

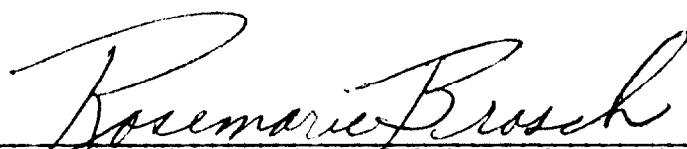
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Award No. 8981
Docket No. 8997
2-SCL-CM-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March, 1982.