

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Norfolk Southern Railway Company
(Southern Railway Company)

STATEMENT OF CLAIM:

1. That the Southern Railroad Company violated the controlling Agreement when they failed to allow Carman R. B. Hoskins to fill a temporary vacancy starting May 31, 1990 at Memphis, Tennessee.

2. That accordingly, the Southern Railroad Company be ordered to allow Carman R. B. Hoskins' request to fill the temporary vacancy as originally requested.

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 employees involved in this dispute are respectively carrier and employes 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.

From May 21, 1990, until June 28, 1990, Carman Marquette was off work because of illness. During that time his assignment was working the train yard, rest days Friday and Saturday. Some ten days after Carman Marquette started his sick leave the Organization's Local Chairman informed the Foreman on duty that the Claimant wished to fill Carman Marquette's temporary vacancy. At the time the Claimant was assigned to work either vacation relief or the rip track. The request of the Local Chairman was denied on grounds that the Carrier's management wished to only fill the position based on daily requirements of service from the rip track and blanked on Thursdays. Thereafter on June 3, 1990, the Local Chairman filed a formal claim on grounds that the Carrier was in violation of Rule 21 by not permitting the Claimant to fill the temporary vacancy. This Rule states in pertinent part:

"Rule 21

Vacancies in positions of employees temporarily absent from work because of sickness, leave of absence, etc., shall continue to be filled as follows in accordance with past practice:

(a) The senior qualified employee desiring to do so may take the temporary vacancy by virtue of his seniority by handling the matter with the appropriate carrier officer and local committee. Said employee shall thereafter work the position until such time as the employee who is off sick or on leave of absence returns to work.

(b) Upon the return of the employee off sick or on leave of absence to his regular position, all employees affected thereby shall return to their former positions. In event the position of an employee affected has been abolished or has been taken by a senior employee in the exercise of a displacement right the employee affected shall exercise a displacement in accordance with Rule 26.

(c) Nothing in this rule shall be construed to prevent the blanking of positions during the temporary absence of employees due to illness, leave of absence, etc."

According to the Master Mechanic who answered the claim local management choose to exercise their rights as outlined in Rule 26(c) cited in the foregoing and blanked the position. The work which was being done was only to assist other "yard carmen when necessary as dictated by the volume of trains and/or cuts to be inspected." In response, the Local Chairman stated that the position had not, in fact, been blanked since it was "being worked eight hours a day four days a week...."

A review of the record shows that the position which Carman Marquette had vacated because of illness during May and June of 1990 was assigned hours of 7:00 A.M. through 3:00 P.M. first shift, Sunday through Wednesday, and 3:00 P.M. through 11:00 P.M. third shift, Thursday. The Carrier had two different Carmen from the rip track work the first shift hours in the train yard on Sunday through Wednesday and had no work in the train yard on the second shift on Thursday. It appears that the logistics decision facing local management when Carman Marquette was off was to either blank his position and fill in whenever work had to be done or blank the Claimant's vacation relief position and allow the Claimant to work Marquette's position. Management opted to keep Claimant in his position and blank Marquette's position in order to "better

control (the) operation" as the Master Mechanic explains in memo dated August 17, 1990 which is part of the record. In the particular case, since the "Chattanooga Territory...work(s) with a minimum number of employees to cover the necessary positions to run (that) portion of the railroad..." management felt that it was necessary to keep the vacation relief position open to protect "vacations on all shifts." Actions taken by the Carrier were clearly protected by Rule 21(c). On basis of evidence of record the Organization has not sufficiently met its burden of proof in this claim and it, therefore, cannot be sustained. The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1992.