Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13024
Docket No. 12945
96-2-94-2-96

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(And Aerospace Workers, AFL-CIO
(
(Southern Pacific Lines
((St. Louis Southwestern Railway Company)

STATEMENT OF CLAIM:

"1. That the Southern Pacific Lines violated Rule 12-3 of the Current Controlling Agreement between the International Association of Machinists and Aerospace Workers, and the St. Louis Southwestern Railway Company, dated November 1, 1953, subsequently revised and amended and Rule 12 (b) of the National Vacation Agreement, when on the dates of November 22, 1993, through November 26, 1993, the Carrier denied Machinist W. H. Kolb (hereinafter referred to as claimant) his contractual rights in the utilization of his seniority, to provide relief work coverage for Machinist T. K. Harrison's assigned vacation on the above stated dates.

2. That the Carrier compensate Claimant eight (8) hours at the straight time rate.

3. That the Carrier comply to the fullest extent with provisions of the prevailing agreements, specifically, Rule 12-3 of the Current Controlling Agreement and Article 12 (b) of the National Vacation Agreement."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 facts are not disputed. Machinist Harrison who was assigned to work the switch engines was granted a two week vacation from November 15 to November 26, 1993. The senior machinist (Claimant) worked on the G. E. side of the shop and requested to fill the vacation vacancy. Granting this seniority would have permitted the Claimant to gain an extra eight hours pay and move from his Sunday and Monday rest days to the premium rest days of Saturday and Sunday for that vacation period.

The Organization asserted its Claim by letter of December 5, 1993. It argued that the Carrier violated the Agreement by denying Claimant's right to fill a vacation vacancy. The Organization rests its claim on Rule 12 and Article 12 (b) of the National Vacation Agreement. The Organization argues throughout the handling of this claim that the Carrier has always used the principle of seniority and Rule 12 of the Agreement. Article 12 (b) was not utilized as there were no vacation relief positions. The Claimant followed the regular practice of requesting the position and was denied his Agreement rights to the vacancy.

The Carrier argues that no Rule or Article of the National Vacation Agreement was applicable in these circumstances. While the position was open due to a vacation, the Carrier utilized another on-duty Machinist to perform the needed work. No overtime was paid and the Carrier maintains that the position was never vacant. Accordingly, the Claimant lacked seniority rights under the Agreement.

The Board is aware that associated herewith are additional disputes over the GE Contract, greater expenses and the movement of other employees if this position had been filled. The Board has also carefully followed the arguments on past practice, availability and the signed statements. Central to a resolution of this dispute is the language of the Agreements as applied to the circumstances of this claim, as clear language must control over practice.

The central elements of dispute relate to Rule 12 of the Agreement and Article 12 (b) of the National Vacation Agreement. Rule 12 states as follows:

"Rule 12 New Jobs, Vacancies and Transfers

12-1. Any vacancy or new job established will be bulletined to employees in the subdivision of the respective Crafts in which the vacancy occurs...

> 12-3. For the purpose of this rule vacancies... of thirty days duration shall be considered permanent vacancies. Vacancies of less than thirty days duration shall be considered temporary and may be filled without advertisement. Senior employees will be given preference in filling temporary vacancies."

The Organization alleges throughout this claim that a vacancy existed and that the senior employee was not given preference in filling the position. Additionally, Article 12 (b) of the National Vacation Agreement states in part:

> "As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, ... such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled, and a regular relief employee is not utilized, effort will be made to observe the principle of seniority."

The Board's application of the Agreement language to these circumstances forces us to deny the claim. The National Vacation Agreement takes precedence and states clearly that such absences "will not constitute vacancies... under any agreement." Therefore, this was not a vacancy and Rule 12 was inapplicable. Furthermore, when the Carrier fills the position it is guided by the clear language of making an "effort... to observe the principle of seniority." In this instant case, the record contains evidence that such effort was made. The Carrier asserted without contradiction that to permit the Claimant to fill the position would have increased its costs. The Board finds that the Carrier correctly pointed to Article 12 (a) of the National Vacation Agreement in supporting its right to act as it did in this case at bar. Article 12 (a) holds that "a carrier shall not be required to assume greater expense..." and the facts support the Carrier's actions. If the Claimant had taken the position, his position would have to have been filled at the penalty rate, while the employee who worked the vacation opening was not required on his own position which did not need to be filled. We have considered the Organization's Award support, but find that unlike those Awards, the Carrier in this instance would incur increased costs in its consideration of the Claimant for the position (Third Division Awards 11463, 14621, 14510, 15637, 5917).

Accordingly, finding clear contract language; no applicability of practice as a determinant; and the right of the Carrier to consider, but not mandate assignment by seniority, the claim must be denied. The Board finds no violation of the Agreement.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of August 1996.