

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on Illinois Central System, that extra Operator E. J. Vinson was improperly displaced from the temporary vacancy on the position of ticket agent-operator at Fulton, Ky., on November 13, 14, 15, and 16, 1935, by Extra Operator O. D. Elam, and that Vinson shall be paid a full day's pay of eight hours for each of those days at the rate of the ticket agent-operator position."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"On October 28, 1935, Extra Operator O. D. Elam was assigned to a temporary vacancy at Dawson Springs, Kentucky, hours 11:00 P. M. to 7:00 A. M., relieving Telegrapher W. L. Nichols. This temporary vacancy was brought about by Agent-operator G. C. McAuley laying off. Operator Elam was off duty at 7:00 A. M. on November 9. He went to breakfast, then returned to the station and while assisting Relief Agent-Operator J. C. Meadows grease a baggage truck at 7:40 A. M., he mashed his thumb. He worked from 11:00 P. M., November 9, to 7:00 A. M., November 10, and from 11:00 P. M., November 10, to 7:00 A. M., November 11. At 12:15 A. M., November 11, he wired Chief Dispatcher Eaker for relief on account of injury to his thumb. He was relieved and returned to his home at Fulton, Kentucky, on train No. 125 November 11, and reported to our Local Surgeon at that point. At 5:45 A. M., November 11, Ticket Agent-Operator Bransford at Fulton, Kentucky, reported sick. E. J. Vinson, who resided at Paducah, Kentucky, was the senior operator unplaced, but he could not reach Fulton in time to protect the position starting at 7:30 A. M. that day, and J. D. Walker, a former employee, was used on the job on November 11. Operator Vinson was notified, and exercised his seniority to the position, beginning work at 7:30 A. M., November 12. On November 12, the Local Surgeon released Operator Elam for service as of 7:00 A. M., November 13, and at 5:00 P. M. on November 12, Elam wired Chief Dispatcher Eaker for permission to exercise his seniority and displace Operator Vinson (who was junior to Elam) on the ticket agent-operator's position at Fulton, commencing on the morning of November 13. The permission was granted, and Operator Elam worked the position on November 13, 14, 15, and 16. The vacancy ended at the close of the day on November 16. Relief Agent J. C. Meadows at Dawson Springs wired Chief Dispatcher Eaker at 2:35 P. M. on November 12 that he would make transfer to Agent-operator McAuley on November 13, and the vacancy at Dawson Springs was ended by Agent-operator McAuley returning to work at 7:00 A. M., November 13, 1935."

An agreement between the parties bearing effective date of August 16, 1932, was placed in evidence, and Article 2, Rule 7, third paragraph, of said agreement was specifically cited as governing the dispute. This paragraph reads as follows:

"The senior extra employee shall have preference of all extra work, if available and competent; but if filling a vacancy at the time, a junior employee is assigned, the junior employee may hold the position for a period of ten (10) days from the time he commenced work on the position, when he can be displaced by the senior employee."

POSITION OF EMPLOYEES.—The employees argued as follows:

"Extra Operator Vinson was assigned to the temporary vacancy on Ticket-Agent position at Fulton, Kentucky, on November 12, 1935, and worked the position on that day.

"Extra Operator Elam had been assigned to the temporary vacancy on third trick at Dawson Springs beginning October 28th, 1935. While so assigned, he requested and was given relief on November 11th, owing to an injury to his thumb. After receiving medical treatment by the Company's physician at Fulton, Elam was released on November 12th, by the Company physician for service beginning 7:00 A. M., November 13th. Elam was then free to return to his temporary assignment at Dawson Springs on the evening of November 13th. Instead, he was permitted by the carrier to displace Vinson (junior to him) on the temporary vacancy of ticket-agent at Fulton, which position Elam worked November 13, 14, 15, and 16, when the vacancy terminated by the return of the regular incumbent.

"Article 2, Rule 7, third paragraph, quoted above, governs the assignment of extra employees and provides the displacement rights which may be exercised among them. Its intent is clear in the provision which permits a senior extra employee to displace a junior extra employee on an assignment only after the junior employee has worked the position ten days if the senior employee was filling a vacancy at the time the junior employee was assigned.

"Elam, the senior extra employee, was filling the position of second trick at Dawson Springs beginning October 29th, which vacancy did not terminate until the end of the tour of duty beginning November 13th. Elam was relieved at Dawson Springs on November 11 and 12 because of personal injury, but was available to return to his assignment at Dawson Springs on November 13th; therefore, he was filling a position when Vinson was assigned at Fulton but had no right under Rule 7 to displace Vinson at Fulton until Vinson had worked the position ten days at Fulton.

"It is the custom and practice of long standing on the Illinois Central System that an extra employee assigned to a vacancy shall remain on the vacancy until it is regularly terminated, and even though he may be relieved a day or more for personal reasons, he has the right and should, resume work on the position when at liberty to do so, and continue on the position until the vacancy is terminated, except he may be displaced after working ten days by a senior extra employee who was filling a vacancy when the junior employee was initially assigned as provided by Rule 7.

"In accord with this custom and practice, the vacancy at Dawson Springs belonged to Elam while it existed, after he had been assigned on October 28th. The necessity to secure relief from duty on the position because of personal injury did not break the continuity of his assignment. When Elam was again physically fit on November 13th, he should have been returned to the assignment at Dawson Springs. He had no right to displace any junior extra employee elsewhere while he was assigned to the vacancy at Dawson Springs until the Dawson Springs assignment was terminated, and further provided the junior extra employee had worked ten days on the other assignment.

"Instead of returning Elam to resume his initial assignment at Dawson Springs when physically fit on November 13th, as should have been done by the carrier, he was permitted to displace Vinson (junior to him) at Fulton, in violation of the plain intent of Rule 7, before Vinson had worked there ten days.

"Vinson had worked on the Fulton assignment but one day, November 12th, when he was displaced by Elam. Vinson was entitled, under Rule 7, to work at Fulton at least ten days before subject to displacement by a senior extra employee (Elam, in this case), and as the vacancy continued four days (November 13, 14, 15, and 16) after he was thus improperly displaced, he is entitled to full pay at the rate of the position for those four days on which he was consequently idle."

POSITION OF CARRIER.—The carrier argued as follows:

"Both Elam and Vinson were extra employees on the dates involved in this claim. Operator Elam's seniority date is June 22, 1918, and Operator Vinson's seniority date is May 17, 1919. The work performed by Operator Elam as ticket agent-operator at Fulton, Ky., on November 13, 14, 15, and 16, 1935, was extra work. Operator Elam was senior to Operator Vinson, and was available and competent. Therefore, the disposition of the claim hinges on the question of whether Elam can be considered as filling a vacancy at the time Vinson was assigned to the position at Fulton. It is evident from the joint statement of facts that he was not filling a vacancy at 7:30 A. M., November 12, which is the time and date Operator Vinson was assigned to the position at Fulton.

"As will be noted from the joint statement, Operator Elam was injured while off duty at Dawson Springs at 7:40 A. M., November 9. He was relieved at 7:00 A. M., November 11, on account of this injury. Operator Vinson was not assigned to the position at Fulton until 7:30 A. M., November 12. On this date Operator Elam's status was that of an employee laying off on account of personal injury. Under the rule quoted, the only condition under which a junior employee may hold a position for a period of ten days in preference to a senior employee is when the senior employee is filling a vacancy at the time the junior employee is assigned. When the senior extra employee is off account sickness or injury, he cannot be considered as filling a vacancy, and has a right to displace the junior extra employee at any time he becomes available and competent, without regard to the ten-day feature.

"Attention is called to the fact that on November 12, Operator Elam was released by the Local Surgeon for service as of 7:00 A. M., November 13. He displaced Vinson as of 7:30 A. M., on November 13, and the vacancy on his former temporary assignment at Dawson Springs ended at 7:00 A. M., November 13; so, in reality, there was no opportunity for Operator Elam to be reassigned to service at Dawson Springs after he was released by the Local Surgeon, because no vacancy existed at that point. It might be added here that the rule did not require Operator Elam to go back to Dawson Springs instead of asserting his seniority rights to extra work elsewhere.

"It must be conceded by everyone familiar with labor contracts that the primary purpose of seniority rules in all such agreements is to afford the senior employee preference of positions to be filled and work to be performed, and in this case the evidence is conclusive we could not properly deny Operator Elam the right to perform the temporary work available at Fulton, in preference to Operator Vinson who was junior to Operator Elam. The claim of Operator Vinson is not justified under the provisions of paragraph 3 of Rule 7 and other rules of the schedule agreement, or any other agreements or understandings in effect between the carrier and the employees, and we respectively ask that it be denied."

OPINION OF BOARD.—Operator Elam worked at Fulton, November 13, 14, 15, and 16, 1935, and was duly paid for the service thus rendered. The claim on behalf of Operator Vinson is in the nature of a penalty claim, which can be sustained only if supported by a showing that the relevant provisions of the agreement were violated. It appears that such showing has not been made. Under these provisions and the circumstances of this case Operator Vinson, the junior employee, could properly be displaced by Operator Elam, the senior employee, only after Vinson had held the position at Fulton for a period of ten days from the time he commenced work on that position provided Elam was filling a vacancy at Dawson Springs when Vinson was first assigned to the vacancy at Fulton. But Elam was not filling the vacancy at Dawson Springs at that time; as admitted by both parties, another extra operator was then working at Dawson Springs, Elam having been relieved because of personal injury. The most that can be claimed with any show of reason is that Elam was entitled to return to his earlier assignment at Dawson Springs upon becoming available, but in the joint statement of facts it is declared that "the vacancy at Dawson Springs was ended by Agent-Operator McAuley returning to work at 7:00 A. M., November 13, 1935," which was prior to the assumption of work by Elam at Fulton. Under these circumstances Elam could not have returned to the vacancy at Dawson Springs, since no vacancy existed. Even

if, however, this declaration certified by both parties is not accepted at its face value, since there was evidence of record tending to show that the vacancy at Dawson Springs which had been earlier filled by Elam was not in fact terminated till the morning of November 14, after he had been assigned at Fulton, it still remains true that Elam was not filling that vacancy at the time Vinson was first assigned to the vacancy at Fulton. Furthermore, the position of the employes that the unavailability of Elam at the time of Vinson's assignment was tantamount to and had the same effect as filling a vacancy is not tenable. The rule seeks to protect the senior employe as well as the junior employe: If the senior employe is available and competent he is given preference to all extra work; only if he is filling a vacancy at the time the junior employe is assigned does that junior employe become entitled to ten days' work before he can properly be displaced. In other words, if the senior employe is actually working at the time of the junior employe's assignment the junior employe is protected in his assignment for a period of ten days; but if the senior employe is not working—if he is unavailable for reasons other than the filling of a vacancy—he is entitled as a competent senior employe upon becoming available, to his preference to all extra work. Such an interpretation appears to be in accord with both the letter and the spirit of the rule, and the facts of record disclose no violation of its terms as thus interpreted.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the facts of record do not disclose any violation, as charged, of the third paragraph of Rule 7, Article 2, of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1937