

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees.)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Chicago, Rock Island and Pacific Railway in behalf of Mr. O. A. McMahan, seniority date April 4th, 1923, Class No. 3 regularly assigned extra board employe at Shawnee, Okla. store, for rate of position vacant or blanked for all days he was not used to fill vacancies in regular force in his seniority district at Shawnee store."

EMPLOYEES' STATEMENT OF FACTS: "Mr. O. A. McMahan, seniority date April 4th, 1923, was regularly assigned by bulletin, under the provisions of Rules 6, 8, and 13, to the extra board to protect vacancies of short duration.

"Mr. W. A. Aloway, regularly assigned counterman, rate 57 cents per hour, was off his regularly assigned position as follows:

	TOTAL DAYS
November 9th, 10th, 11th, 12th, 13th, 15th, 16th, 17th, 18th, 19th, 20th, 1937,	11
January 13th, 14th, 15th, 24th, 1938,	4
February 18th, 19th, 1938,	2
March 12th, 28th, 30th, 31st, 1938,	4
April 1st, 2nd, 5th, 7th, 8th, 9th, 1938,	6
Total,	27

"Mr. C. T. Walker, regularly assigned counterman, rate 57 cents per hour, was off his regularly assigned position, as follows:

March 8th, 9th, and 10th, 1938,	3
April 15th, 16th, 18th, 1938,	3
May 14th, 20th, 21st, 23rd, 28th, 31st, 1938,	6
Total,	12

further provides for bulletining positions on the extra board. The claimant in this case secured his position on the extra board by bulletin. Based on the rule and these facts, does the claimant have the right to fill short vacancies? The rule does not give him this right, because the rule does not state that an employe from the extra board will be placed on a vacancy and will fill it until return of the regular man. The rule simply provides that an employe from the extra board placed on a vacancy will fill it until return of the regular man. The 'placing' of the men is a condition precedent to the gaining of rights to continue to fill the position. There is no obligation on the carrier to use a man to fill a vacancy although a man from the extra board does have the first right to be used if one is used.

"In this state of the record what do we find as to practice—a practice, antedating the present schedule. The practice is that the carrier has not filled short vacancies except when the work required the filling, and this practice has been known and acquiesced in by the organization. Even if there were a conflict as to the meaning of the rule the past practice would control.

"The claim of the employes must be denied."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931.

OPINION OF BOARD: Both parties agree that the validity of this claim depends primarily upon the meaning and intent of Rule 13 of the Agreement, which deals with the maintenance of extra boards. This rule appears to be distinctive of the Agreement here operative, and no awards of this Board have been cited which bear directly upon the precise question at issue.

The carrier concedes that when temporary vacancies exist and the management elects to fill them, these vacancies must be filled by use of employes from the extra board; it denies that it is mandatory upon the carrier to fill such vacancies. The employes, on the other hand, contend that it is obligatory to fill temporary vacancies where employes on the extra board are available, and that the entire purpose of Rule 13 would be defeated if the carrier were deemed to be free, under that rule, to leave these positions vacant or blanked.

The rule itself contains no language expressly imposing an obligation upon the carrier to fill temporary vacancies; but neither does it by any express words impose the obligation, soundly admitted, to use employes from the extra board when temporary vacancies are in fact filled. Both duties are derived from the general purpose of the provisions as to the maintenance of extra boards contained in Rule 13. Under this rule these extra boards are to be maintained, not as a matter of course, but only "when it is mutually agreed." Such agreement would be reached, it must be presumed, when deemed of advantage to both parties. The benefit to the carrier would flow from having one or more employes available for work at the location of the extra board at any time called for; and the benefit to the employes would flow from having the right to fill temporary vacancies at that location. The employes on the extra board have no guarantee as to the number of days per week work will be available to them; they must be assumed to have accepted the risk incident to the uncertain emergence of temporary vacancies. But if, in addition, the carrier could, as of right, keep blanked such temporary vacancies as do emerge, then the employes on the extra board would be holding themselves available at the particular location without any assurance of work whatever, even when temporary vacancies do occur, except in so far as the carrier might choose to use them. These considerations, coupled with the fact that Rule 13 expressly provides that positions on the extra board, like actual work positions and work vacancies, must be bulletined and assigned in conformity with the general rules of the Agreement pertaining to these matters, support the conclusion that under that rule employes regularly assigned to extra boards are entitled to fill such temporary vacancies as result from the voluntary layoff of the employes regularly assigned to the positions involved.

In this proceeding the employe on whose behalf the claim is made was regularly assigned to the extra board set up by agreement at the Shawnee, Oklahoma, store; and since he was the only employe on that extra board, and was available for the temporary vacancies involved, he was entitled to the work of the positions provided by these temporary vacancies.

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 evidence of record discloses a violation of Rule 13 of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of May, 1940.