

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

1. That the Carrier violated the Agreement in effect by not assigning motor car repairman helper J. W. Bateman to fill temporary vacancies caused by motor car repairman J. W. Clawson being on vacation from June 15th to 21st, and Motor car repairman S. M. Mays being on vacation from August 17th to 23rd, 1942;

2. That Mr. J. W. Bateman shall be paid the difference between what he earned as motor car repairman's helper and that which he would have earned as motor car repairman during the two periods in question.

EMPLOYEES' STATEMENT OF FACTS: During the period June 15th to June 21st, 1942 inclusive motor car repairman J. W. Clawson was granted his vacation, and during the period August 17th to 23rd, 1942 inclusive motor car repairman S. M. Mays was granted his vacation. Joe Cooper, a B. & B. carpenter who held no seniority rights in the motor car repairman's sub-department or group, was assigned to relieve both motor car repairman J. W. Clawson and motor car repairman S. M. Mays.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, two motor car repairmen were granted vacations, one during the period June 15th to June 21st inclusive and the other from August 17th to 23rd inclusive. Each of these two motor car repairmen were away from the service six days, thus causing two temporary vacancies of six days each.

Rule 11, paragraphs (a) and (b), of Agreement in effect governs the filling of vacancies both permanent and temporary and reads:

"RULE 11 (a). New positions and vacancies, except those of laborers, will be bulletined within ten (10) days previous to or following the dates such vacancies occur, except that temporary vacancies need not be bulletined until the expiration of twenty (20) days from the date such vacancies occur.

RULE 11 (b). Promotions to new positions or to fill vacancies will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the gangs in the sub-department of employees entitled to consideration in filling the positions, during which time employees may file their applications with the official whose name

vacancies occur. Assuming that the absence of Messrs. Clawson and Mays on their vacations did, as the Employees contend, create a temporary vacancy. It would not require bulletining, and in the absence of bulletining there is no requirement or practice under rules of the wage schedule agreement that would require the deadheading of Mr. Bateman, a motor car repairman and helper on an adjacent division, but located some 235 miles away from headquarter point of the two employees who were to be absent for six days each on vacation. The vacation periods were less than twenty days, and under Rule No. 11 not subject to bulletining and filling under the seniority rules of the working agreement.

There being no practice or rule in the working agreement between the Carrier and its employees represented by the Brotherhood to sustain such a claim as the Employees have presented to your Honorable Board, the Carrier feels that it should be properly denied.

OPINION OF BOARD: Regularly assigned Motor Car Repairman, J. W. Clawson, located at Division Headquarters, Monroe, Louisiana, on Louisiana Division, Carrier's Southern District was granted a vacation of six working days, June 15-21, 1942, and regularly assigned Motor Car Repairman Mays, who also had headquarters at Monroe, was granted a six working day vacation August 17-23, 1942. Motor Car Operator Cooper, assigned with bridge gangs of the Louisiana Division, was used to fill the position of Clawson and Mays during their absence on vacation.

The Petitioner contends that J. W. Bateman, who holds seniority rights throughout Carrier's Southern District which includes both the Memphis and Louisiana Division, should have been used instead of Cooper who holds no seniority in the Southern District. The Employees rely upon Rules 11 (a) and (b) to support their claim, while Carrier contends that Rules 11 (a) and (b) have no application to the facts in the record and also contends that this rule has been nullified by Rule 12 (b) of the Vacation Agreement.

The Carrier contends that inasmuch as the periods for which the position here involved were to be filled, covering a total spread of only seven days each, there was no requirement for bulletining such positions. To follow the Carrier's reasons, then we would have to ignore the following part of Rule 11 (b) which reads: "New Positions or vacancies may be filled temporarily, pending bulletin and assignment, by the senior available competent employee entitled to promotion, or the senior available competent employee holding seniority in that classification and not able to hold position in that classification account reduction in forces." This we cannot do. We think when this rule is considered as a whole, it contemplates that new or temporary positions must be filled by senior available competent employees if a bulletin is necessary; and if not necessary to bulletin the position because the vacancy would cease before it could be bulletined, then it would also be necessary to use the available competent senior employee. To hold otherwise would destroy seniority rights. See Awards Nos. 2341, 2426, and 2490.

Carrier contends that Rule 12 (b) of the Vacation Agreement nullifies the provision of Rule 11 (a) and (b), yet at the same time the Carrier says that this Adjustment Board is without authority to initially interpret and construe the provisions of the Vacation Agreement of December 17, 1941, because the interpretation of that Agreement is controlled by Article 14 of the Vacation Agreement.

If this is true, then we are precluded from ascertaining if Rule 12 (b) of the Vacation Agreement nullifies Rule 11 (a) and (b). But in passing, without undertaking to interpret Rule 12 (b) of the Vacation Agreement, we find nothing in this Rule that nullifies Rule 11 (a) and (b).

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 Employees involved in this dispute are respectively carrier and employees 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 Carrier violated the current Agreement as contended by the Petitioner.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.