

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swain, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier violated the Clerks' Agreement:

(a) When on June 10th, 1947, it blanked the position of Clerk, Duluth Ore Docks, when Mr. Paul Otos, the incumbent of the position laid off on account of sickness.

(b) When on August 3rd, 4th and 5th, 1947, it blanked the position of Clerk, Duluth Ore Docks, when Mrs. Virginia Grant, the incumbent of the position, laid off on account of sickness.

(c) When on August 27th, 1947, it blanked the position of Clerk, Highland Ore Scales, when Mr. James Larson, the incumbent of the position laid off on account of sickness.

(d) That the senior available employe, regularly assigned to the same class of work as the positions mentioned in paragraphs (a), (b) and (c) shall now be paid 8 hours pay at overtime rates on each of the involved dates, account carrier's violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Clerks Otos, Grant and Larson are all regularly assigned to positions "necessary to the continuous operation of the railroad." That is, they are positions worked seven days per week and paid at straight time rates for Sunday work.

The past practice on this carrier has been to allow sick leave pay to such employes, when off sick, if the work was kept up by other employes without additional cost to the carrier. In 1947 this practice was stopped and the employes filed claims under Rule 45—"Vacations and Sick Leave."

Without arguing the merits of the individual claims filed under Rule 45, the organization filed protest against the carrier blanking the positions of the incumbents under Rule 34 (b) "Sunday and Holiday Work."

This claim has been denied by the carrier.

POSITION OF EMPLOYES: There is in evidence between the two parties, an agreement bearing effective date of January 15, 1947, from which the following rules thereof read.

Rule 12 (a) reading:

"Vacancies of less than thirty (30) calendar days' duration shall be considered short vacancies and may be filled without bulletining. However, when there is reasonable evidence that such vacancies will extend beyond the thirty (30) day limit, they shall be immediately bulletined, showing if practicable, probable expected duration."

It will be noted that the rule makes no exception to assignments made under Rule 34 (b), therefore, the Carrier contends the rule leaves it optional with the management as to whether or not short vacancies of less than thirty days are to be filled.

Rule 13 (b) reading:

"When forces are increased or vacancies occur, furloughed employees shall be returned and required to return to service in the order of their seniority. Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces."

The last sentence of this paragraph clearly implies that short vacancies may be spanned by rearrangement of regular forces and since no exception is made to assignments made under Rule 34 (b), it is the Carrier's position that this provision also applies to any and all assignments on which short vacancies may occur.

Considering the complete lack of support for these claims under agreement rules, it is respectfully requested that the claims be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: This case involves three separate instances of employees in positions necessary to the continuous service of the Carrier being absent on account of illness and the Carrier not filling their positions on such days.

Claims for compensation for such days are made for the senior available employee under the provisions of Rule 34 (b) Sunday and Holiday Work, of the Current Agreement.

It seems to be agreed that the Carrier was working the three positions here involved under the provisions of Rule 34 (b) and was paying the pro rata rate for Sundays.

Under such circumstances we have held in many awards that the positions must be filled seven days per week except in cases of emergency. Here no emergency was suggested.

The Carrier seems to contend that it was within its rights in distributing the work necessary to be done on those positions on those days among other employees who were working. With this we cannot agree.

When the employee regularly assigned to such a position is not working, the position must be assigned another employee of that class if one be available. The Carrier does not contend that no such employees were available.

Nor can the Carrier avoid the effect of the rule to say that the position in each of these claims was blanked by the employee because the employee was absent because of illness. It is still the business of the Carrier to fill the position on such days.

The Carrier here depends on Rule 12 (a) of the Current Agreement, Short Vacancies, which provided:

"Vacancies of less than thirty (30) calendar days' duration shall be considered short vacancies and may be filled without bulletining."

The Carrier contends that the word "may" as here used should be interpreted as meaning that such vacancies do not have to be filled and points out that in this rule no exception is made as "to assignments made under Rule 34 (b)." A reading of the entire rule makes its perfectly clear that this rule does not give the Carrier the option of blanking a seven day position but only gives the Carrier the right to fill such a short vacancy without bulletining.

The Carrier also relies on Rule 13 (b) dealing with returning furloughed employees which provides that "Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces." This provision relates only to vacancies **occasioned by the filling of positions pending assignment by bulletin** and is, therefore, not applicable here.

By failing to fill these three positions on the days in question, the Carrier violated the agreement.

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 Agreement as claimed.

AWARD

Claims (a), (b) and (c) sustained.

Claim (d) sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of November, 1948.