

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Mortimer Stone, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
MISSOURI PACIFIC RAILROAD COMPANY**

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

(1) That the Carrier violated the agreement by not assigning Water Service Repairmen F. Wiggins to the temporary position of Water Service Foreman on the Missouri-Memphis Division during the absence of the regular foreman on vacation during the period December 16 to December 27, 1946;

(2) That Water Service Repairman F. Wiggins should have been assigned to this temporary vacancy instead of duties of such position being performed by the Assistant B&B Supervisor and others;

(3) That Water Service Repairman F. Wiggins be reimbursed for the difference between what he was paid as Water Service Repairman and what he should have been paid as the Water Service Foreman rate during the period referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier maintains that Poplar Bluff, Missouri is headquarters for Water Service Foreman J. W. Files. Mr. Files supervises water service employes on both the Missouri Division and the Memphis Division.

Commencing December 14, 1946, Foreman J. W. Files went on vacation. He left in charge Water Service Repairman O. H. Blankenship. Blankenship also made his headquarters at Poplar Bluff, Missouri.

Water Service Repairman Wiggins of Wynne, Arkansas has more seniority as a Water Service Repairman than has Mr. O. H. Blankenship. During the period of Foreman Files' absence account of vacation, Water Service Repairman Blankenship issued instructions to the other water service employes on the Missouri-Memphis Divisions. The Employes have contended that since Water Service Repairman Wiggins was senior to Blankenship, that Wiggins should have been assigned to fill the vacancy of foreman during Mr. Files' absence. The Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute, dated July 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** We quote below a letter received by General Chairman H. B. Oholendt from O. H. Blankenship. This letter is dated December 18, 1946 and is as follows:

rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

It is to be noted that no claims have been filed by those whom the organization alleges performed some of the duties attaching to the Water Service Foreman's position. Mr. Blankenship, the man who it is claimed by the organization performed Foreman's duties during the absence of Mr. Files, was only paid the schedule rate of compensation attaching to the position of Water Service Repairman during the period here in question. No one was paid the Foreman's rate during that period except Mr. Files, the Foreman who was on vacation. It is urged that Mr. F. Wiggins should have been assigned to the Foreman's position during the vacation of Mr. J. W. Files solely because he is the senior Water Service Repairman, and not because of any duties he may have performed during Foreman Files' vacation.

Carrier takes the position that the B&B Supervisor or the Assistant B&B Supervisor could, during the absence of Mr. Files on vacation, where needed, issue instructions to the Water Service Forces. Mr. Files was instructed, prior to his departure on vacation to plan and lay out the work to be performed during his absence, which instructions he carried out. In the event of any unusual circumstances supervisory matters were handled by the B&B Supervisor and Assistant B&B Supervisor, which, Carrier contends, was within the prerogative of Management and that duties performed did not at any time during Foreman Files' absence exceed 10 to 15 per cent of the duties attaching to said position. (See Article 10 (b) of Vacation Agreement of December 17, 1941 quoted on Page 20 of this submission.)

Part (3) of the Employees' Statement of Claim does not contain any allegation of facts which could in any way have any effect upon the merits of the matters here in dispute. It merely relates to the money award sought.

In conclusion, Carrier denies there is any merit to the claim here presented by the organization. It contends this effort is only another part of the scheme designed in an attempt to force the Carrier to establish the position of Assistant Water Service Foreman or Water Service Foreman on the Memphis Division where none has existed for many years, if ever. The attention of your board is respectfully directed to the other claim now docketed with your board in connection with which submission is due on April 4, 1949.

There are no rules of the agreement in effect between the parties to this dispute upon which the organization can rely to support the Employees' Statement of Claim. Any such rule must, of necessity, be negotiated between the parties in accordance with the provisions of the Railway Labor Act. Your board is without authority to write such a rule into the agreement in effect between the parties to this dispute.

There is no evidence of a violation of any of the rules of the working agreement nor the Vacation Agreement referred to in paragraph 1 of Carrier's Statement of Facts.

This claim, therefore, is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier's Water Service foreman with jurisdiction on both the Missouri and Memphis Divisions, went on a twelve day vacation in December 1946. This claim is based on the contention that others carried on the duties in his absence and that Claimant was the senior, available, competent employe entitled to promotion and as such should have been assigned to the position and paid the foreman's rate during his absence.

As the claim was being progressed, Carrier's Chief Personnel Officer offered to join in submitting the matter to the Committee established by Article 14 of the National Vacation Agreement, but instead the Organization filed

an ex parte submission to this Board. Carrier urges that this Board should decline jurisdiction and remand the dispute to the property so that proceedings may be had pursuant to the provisions and requirements of the Vacation Agreement.

The Organization asserts in answer that the Vacation Agreement is not involved, in that the only issue involved is the right of Carrier under the effective rules to assign one other than the senior, available, qualified employee to protect a vacancy.

Carrier, without waiving its challenge to the jurisdiction of this Board, replies in brief:

1. That Claimant was not the senior, available, qualified employee since he held seniority rights only on the Memphis Division and until subsequent agreement, had no right to bid on the foreman's position.
2. That Carrier found it not necessary to fill the position during the foreman's twelve day vacation, and it was not filled.
3. That if any of the duties of the position were performed during the foreman's vacation, they did not exceed ten to fifteen per cent of the duties attaching to the position, and were, therefore, properly distributed among the other employees under the provisions of the Vacation Agreement.

If the first and second asserted defenses are good, then we think the interpretation or application of the Vacation Agreement was not involved, but not so of the third defense. It would be ill advised to have the claim determined piecemeal, and parceled out with different referees participating in its determination. Accordingly, without discussion of the merits of the first and second defenses and without prejudice to their subsequent renewal, we only conclude that we are not willing to sustain either of those defenses and deny the claim on that ground. Therefore, we determine that the claim does involve the application of the Vacation Agreement and should have been referred to the Vacation Committee, and is not now properly before this Board.

**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 the National Railroad Adjustment Board is without jurisdiction to determine the claim.

#### AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.