

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway Company, that J. R. Tarpley, extra Operator-Clerk, who was available but who was not used to provide vacation relief service on the Operator-Clerk Position at Emory Gap, Tenn., June 16, 17 and 18, 1949, shall be compensated for 8 hours on each of those dates at the rate of \$1.27 per hour, as a result of the Carrier's action in depriving Claimant of work to which he was entitled on the seniority basis.

EMPLOYEES' STATEMENT OF FACTS: On February 28, 1949, Carrier issued a vacation assignment circular showing the assigned starting dates of the 1949 vacation periods for Agents, Agent-Operators and Operator-Clerks. The circular also showed the number of vacation days to which the employees were entitled.

A. J. Turman, regularly assigned operator-clerk at Emory Gap, Tenn., was assigned a starting date as of June 16, 1949, for his 12 days' vacation period.

R. C. Vaughan, unassigned operator-clerk, with a seniority date of October 30, 1948, was used to relieve Operator-Clerk Turman at Emory Gap, June 16, 17 and 18, 1949, and was then transferred elsewhere.

J. R. Tarpley, unassigned operator-clerk, and the claimant herein, completed an assignment at Carthage Junction, Tennessee, at 3:00 P. M., on June 14, 1949. On June 15, 1949, claimant notified the Carrier that he (Tarpley) was available for the vacation work at Emory Gap, commencing June 16.

Claimant, with a seniority date of October 10, 1947, and senior to Operator-Clerk Vaughan, was unemployed on June 15 and was available and ready for service on June 16, 1949.

Time claims filed by the claimant for June 16, 17 and 18, 1949, were declined by the Carrier.

POSITION OF EMPLOYEES: An Agreement, bearing effective date of May 1, 1924, is applicable between the parties to this dispute.

The claim involved in this dispute arose as a result of the Carrier's action in not permitting the Claimant herein to fill a temporary vacancy in the

terms of Article 12(b) of the Vacation Agreement. Such expansion of a rule of the rules agreement is accomplished only through the procedure prescribed by the Railway Labor Act.

For the reasons stated, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant was an extra operator-clerk with seniority date of October 10, 1947. R. C. Vaughan was an extra operator-clerk with seniority junior to claimant. On February 28, 1949, a vacation assignment schedule was issued by the Carrier. In compliance with that schedule, it subsequently assigned relief operators for the several positions where the regular assigned occupants were taking their respective vacations. Some time prior to June 16 (the exact date is not shown), R. C. Vaughan was assigned to a relief position at Emory Gap, starting June 16. On June 14, the claimant completed a relief assignment and about noon on June 15, wired the Carrier that he was available for and requested the relief assignment starting June 16 at Emory Gap. At that time Mr. Vaughan was enroute to Emory Gap to take up his relief assignment, and the Carrier advised the claimant that seniority did not apply to vacation relief work and that Vaughan was already enroute to fill the job. Subsequently, on June 19 Vaughan was transferred elsewhere and claimant was given the relief position at Emory Gap for which he had applied. He now claims compensation for June 16, 17 and 18, the three days he was not allowed to fill this position, Vaughan, a junior employee, performing the work, on the theory that the Carrier had violated Rule 17 of the Telegraphers' Agreement.

The contention of the claimant is that the Carrier violated the Agreement by not recognizing his seniority for the Emory Gap job on June 16. The contention of the Carrier is that the Vacation Agreement, Rule 12(b), authorized, under the circumstances, the assignment of Vaughan to that position. The applicable provisions of both Agreements are set forth in the submissions.

We do not believe that a vacation absence is a "vacancy" which must be filled by application of Rule 17 of the current Agreement. The facts here bring this matter squarely under the terms of Rule 12(b) of the Vacation Agreement. If we apply to these facts the contention of the Petitioner, namely, that a vacancy existed in the position which must be filled under Rule 17 of the current Agreement, we would be compelled to ignore the applicable provisions of the Vacation Agreement. This is not the case of a conflict between existing rules. The Vacation Agreement, by its terms, has defined a vacation absence as not a vacancy under any agreement, and to that extent has limited the application of Rule 17.

The next question is whether the Carrier made an effort to apply the principle of seniority. Having arranged, in consultation with the Organization, the vacation schedule for the several employees of the Carrier, it became the burden of the Carrier to arrange for the relief for the vacation absences. The business of the Carrier required that it have someone available to fill the position at the time an employee was due to commence his vacation. The Carrier asserts that frequently an employee on vacation does not return exactly on the termination of the vacation period, and that it, therefore, does not know exactly when a relief employee will be available for another vacation relief assignment. This is not controverted by the Petitioner. For this reason, the Carrier was not able to rely on the availability of the claimant, who was filling a vacation relief assignment which was scheduled to terminate on June 14, for assignment to the Emory Gap job scheduled to commence on June 16. In order that it might be certain that relief was available for the Emory Gap job on the 16th, it assigned another who was available, though junior to claimant. After the third day, the claimant was placed in the position he requested. Under these circumstances, we believe it is not unreasonable to conclude that the Carrier did make an effort to apply the principle of seniority. The language of Rule 12(b) does not impart an absolute requirement that seniority be applied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

The Carrier did not violate the Agreement as claimed.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.