

**Award No. 5462**

**Docket No. TE-5393**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Alex Elson—Referee**

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**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 Extra Agent-Operator J. D. Ruffner, who was available but not used to provide vacation relief work on the agent-operator position at Silver Point, Tennessee, shall be compensated for 8 hours' pay on each date, April 4 to 16, 1949, inclusive except Sunday, April 10, 1949, at the rate of \$1.27 per hour as a result of the Carrier's action in depriving Claimant J. D. Ruffner of work to which entitled on those dates on a seniority basis.

**EMPLOYES' 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.

H. S. Harding, regularly assigned Agent-Operator at Silver Point, Tennessee, was assigned a starting date as of Monday, April 4, 1949, to commence his 12 days' vacation. Silver Point is a station 75 miles east of Nashville, Tennessee.

J. R. Tarpley, unassigned Operator-Clerk, with a seniority date of October 10, 1947, went to Silver Point on Saturday, April 2, 1949, and arranged to take charge of the Silver Point station and thereby permitting vacationing employee Harding to leave that point in advance of his assigned vacation starting date. Agent-Operator Harding was paid a full day's pay for April 2, 1949, and Operator-Clerk Tarpley received nothing for the portion of the day he worked at Silver Point.

J. D. Ruffner, unassigned Operator-Clerk with a seniority date of September 24, 1947, completed an assignment at East Yard, Edgote, Kentucky, a station 67 miles west of Nashville, Tennessee, at 6:00 P.M. on Saturday, April 2, 1949.

Claimant Ruffner, an employee senior to Operator-Clerk Tarpley who filled the Agent-Operator position at Silver Point, was unemployed, available and ready for service on and after April 3, 1949.

Time claims filed by claimant for April 4 to 16, 1949, inclusive, except Sunday, April 10, 1949, were declined by the Carrier.

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

5. It was not known at the time that claimant would be relieved from the position of unknown duration he was filling.

6. Claimant was not relieved from the position he was filling until 6:00 P. M., April 2nd.

7. When relieving employee took over vacationing employee's station, he was at that time the senior available qualified unassigned employee.

8. Article 12(b) of Vacation Agreement provides that "such (vacation) absences from duty will not constitute 'vacancies' in their positions under any agreement".

9. As a vacation absence does not constitute a vacancy in the position under any agreement, any agreement rules governing the filling of vacancies cannot be applicable to the filling of a vacation absence.

10. Notwithstanding the inapplicability of Rule 17(g) of rules agreement in the filling of a vacation absence, the awarding of the work to the senior available qualified unassigned employee reasonably in advance of the commencement date of the vacation absence conformed to the provisions of the said rule.

11. Claimant was not available at the time relieving employee actually went on duty in place of vacationing employee.

12. Claimant had no right to displace relieving employee and did not request to do so, but claim was received from him on April 7th that he should have been used commencing April 4th.

13. Provisions of neither rules agreement nor vacation agreement were violated.

For the reasons stated, the claim should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts and issues herein involved are almost identical with those involved in Award No. 5461. We believe the principles therein stated control this case.

The vacation here involved was to begin on a Monday, April 4. Tarpley, who had been assigned to fill the vacancy at the request of the vacationing employee, went to the station on April 2, 1949, to receipt for agency funds and permit the vacationing employee to leave for his vacation approximately two hours prior to closing time. Claimant, senior to Tarpley, had been filling a vacancy of unknown duration, and was relieved at the end of the work period at 6:00 P. M. on April 2, 1949, the regular employee having reported ready for duty on April 4, 1949. We do not believe that these circumstances should require a holding that the carrier did not make an effort to observe the principle of seniority required by Rule 12(b) of the Vacation Agreement. A vacation plan to work effectively should not preclude one employee from accommodating another as was done in this case.

**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 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

The Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 17th day of September, 1951.