

Award No. 5718
Docket No. MW-4670

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul N. Guthrie, Referee

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 Repairman 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 at the Water Service Foreman rate during the period referred to in part (1) of this claim.

OPINION OF BOARD: This docket first came before the Third Division for decision on March 21, 1950. On that date Award 4780 was made by the Board, which referred the matter at issue back to the property for settlement by the Vacation Committee which had been established under Article 14 of the Vacation Agreement.

Under date of November 21, 1951 the parties to the dispute addressed a joint letter to the Third Division pointing out that before the matter could be submitted to the Vacation Committee that Committee had ceased to exist. In view of those circumstances the parties requested that the Third Division allow the resubmission of the docket for a decision on the merits. The Division agreed to the requested resubmission, and the matter is now before the Division for a decision on the merits.

Water Service Foreman, J. W. Files, in charge of water service work on the Memphis and Missouri Divisions of the Carrier, went on vacation for the period December 16 to December 27, 1946. Claimant F. Wiggins, a Water Service Repairman, on the Memphis Division, makes claim that he was entitled to take over Files' position during said vacation period. It is contended by the Petitioner that O. H. Blankenship, a Water Service Repairman with less seniority than the Claimant was given the responsibility of carrying on Files' work during the vacation period.

Further, it is argued that Claimant would have had no right to the position since prior to March 25, 1948 a Water Service Repairman with seniority rights on the Memphis Division could not bid on a Water Service Foreman's position at Popular Bluff (Files' headquarters).

This record is lacking in proof for the allegation that Blankenship or the Assistant B&B Supervisor carried the responsibilities of Files during the latter's vacation. There are assertions to that effect, but no proof that such duties performed by Blankenship exceeded the allowable percentage in the Vacation Agreement. Articles 6 and 10 (b) of the Vacation Agreement made certain provisions with respect to handling duties of vacationing employees. The record in the instant case does not justify a conclusion that the Carrier exceeded the latitude given in those provisions.

The Claimant has not borne a reasonable burden in showing wherein he is entitled to the relief sought in this proceeding. In this regard Third Division Award 4777, involving these same parties and the same Claimant as the instant case, is especially pertinent. In that case the Board found that Claimant had not made a case in support of the relief sought.

In view of the relevant rules and in consideration of the facts stated in the record, we must find that this claim lacks merit and must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of April, 1952.