Award No. 6082

Docket No. CLX-6092

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective October 1, 1940, was violated at San Francisco, Calif., September 13, 1948, when the Carrier utilized the services of a regularly assigned train service employe in filling a messenger position (16-4) pending assignment by bulletin (September 12 through 22, 1948, inclusive), and

(b) Furloughed train service employe, E. J. Wegman shall now be compensated for monetary losses sustained covering the period in question.

EMPLOYES' STATEMENT OF FACTS: E. J. Wegman, with a seniority date of May 27, 1942, as of September 12, 1948 was a furloughed messenger and was assigned to the San Francisco Extra Board where he accepted such work as was available and which was assigned to him on a "first in-first out" basis.

Position 293-5, Messenger, San Francisco, Calif.-Ogden, Utah Route, Southern Pacific Trains 22, 21, 26, 25, 247, vacant account retirement of Messenger R. R. Savage, was advertised by Bulletin No. 29, September 1, 1948. This vacancy during the bulletin period was assigned to furloughed employe A. J. Back of the San Francisco Extra Board. The position was awarded to O. F. Bold, occupant of Position 16-4, Messenger, San Francisco, Calif.-Salt Lake City, Utah Route, Western Pacific R. R., Trains 2, 39, 40, 1, by Notice No. 29, September 11, 1948.

Position 16-4, thus vacated by Messenger Bold, was advertised by Bulletin No. 30, September 12, 1948. It was first due out on Train No. 2, September 13, following Bold's leaving it to assume Position 293-5 awarded him

Employes have completely failed to show that Extra Board Messenger Wegmann was deprived of any work to which he was entitled in September 1948, beyond that which he actually performed on September 1, 3-6, 7, 9, 11, 13, 15-18, 22-24 and 25-28, or that any rule of the Agreement has been violated. The claim is entirely without merit and should be denied in the light of the several decisions and awards cited recognizing the right of the Carrier to assign a vacation to a train service employe commencing on a day on which his run is scheduled to operate, counting the twelve day period commencing from that day, and on the thirteenth day scheduling the employe to resume work on another position within the pool, the incumbent of which position is then scheduled to start his vacation.

All evidence and data have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced).

OPINION OF BOARD: This claim is based on the fact that employe Evans, upon return from his vacation, worked a turn that had been worked by Messenger Bold, Position 16-4, one of the positions in a pool of sixteen (16) posiitons. Bold, prior to going on his vacation, had bid in another Position 293-5, and was awarded the bulletined position on September 11, 1948.

On June 11, 1948, vacation schedules were set up as follows:

> E. Evans, occupant of Mesenger Position 16-7 on Trains 2-39-40-1, was assigned vacation period from September 1 to 12, both inclusive, 1948, reporting for Train 2 September 13, 1948, on returning from vacation.
>
> O. F. Bold, occupant of Messenger Position 16-4 on Trains 2-39-40-1, was assigned vacation period commencing September 12, 1948.

The Employes claims that due to the fact that Bold had bid in another position, that Position 16-4 became vacant on September 12, 1948, and that Claimant Wegman was first out on the Extra Board and that he should have been called for the vacancy pending assignment by bulletin of Position 16-4, that when he was not called the Agency violated Rule 19 of the effective Agreement.

From a careful reading of the docket and the decisions of the Express Board of Adjustment, particularly Decisions E-1121 and E-1122, it would seem that the question presented in this claim has been decided, that the Agency in adopting a plan of assigning employes to certain turns, in a pool, upon the expiration of their vacation period, is within its rights under the Agreement. Rule 19 has not been violated in this instance. Rule 91 is not involved in this dispute. Therefore, the claim 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 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

That the Carrier did not violate the terms of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 6th day of February, 1953.