

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

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

(a) Carrier violated the current Clerks' and Vacation Agreements at Dallas, Texas, when it assigned an employe holding no seniority under the Clerks' Agreement to perform vacation relief work on Adjustment Clerk's position No. 377, rate \$14.03 per day, and in so doing denied an employe holding seniority the right and opportunity to fill the position; and,

(b) Miss Ina B. Smith shall be compensated for the difference in what she earned on position of Messenger, rate \$10.30 per day (Pos. No. 389 Dallas) and what she would have received on Position No. 377, Adjustment Clerk, rate \$14.03 per day, Dallas, Texas, for the vacation period of Position No. 377, April 16, 1951 to April 30, 1951.

EMPLOYEES' STATEMENT OF FACTS: Miss Ina B. Smith, who was regularly assigned to Messenger Position No. 389, Dallas, Texas, when the instant claim arose, made written request, under the express provisions of Item (2) of Article III, Section 10-a, of the Clerks' Agreement on April 10, 1951, for permission to protect the vacation absence of the incumbent of Adjustment Clerk Position No. 377, Dallas, Texas, during the period April 16, 1951, to April 30, 1951. There were no qualified off-in-force-reduction employes available to perform this vacation relief; however, Carrier declined Miss Smith's request and utilized the services of a so-called "new or extra" employe who had no seniority to perform the service in question.

The Carrier's refusal to grant Miss Smith's request to perform this vacation relief service was called to the attention of the Division Chairman and he immediately addressed a letter to the Superintendent, calling his attention to the requirements of the Agreement and placed that official on notice that failure to comply with the clear provisions thereof would result in penalty claim. The Division Chairman's letter, which Carrier chose to ignore, read as follows:

The records do not show and the Carrier emphatically denies that it has been the practice "in all instances" to advance the messenger, when qualified, to perform vacation relief work on higher rated positions and certainly this has not been done in instances where such handling would have resulted in a violation of other controlling rules. The Carrier has in all instances, where it was possible to do so without conflict with other rules, made an effort to observe the principle of seniority and advanced the occupant of the messenger's position to protect vacation vacancies, when proper request to do so was received from the employee involved. This is evidenced by the fact that Miss Ina B. Smith, the claimant in this dispute, while regularly assigned to position of messenger, was permitted to temporarily advance to and perform vacation relief work on the following higher rated positions:

Pos. No.	Occupation	Vacation Relief Work Performed by Smith
384	Stenographer	April 30 through May 11, 1951
370	Asst. Accountant	July 16 through July 27, 1951
368-C	Asst. Cashier	September 25 through October 8, 1951
368	Asst. Cashier	October 12 through October 25, 1951

* * * * *

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under any of the rules contained in the Clerks' Agreement, Supplemental Agreement, or Vacation Agreement in effect between the parties involved in the dispute and should be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: On March 30, 1951, Claimant was regularly assigned to the position of Messenger No. 389, rate \$10.78 per day. From April 16 through 28, 1951, the position of Adjustment Clerk No. 377, rate \$14.51 per day was unoccupied because the occupant, Juanita Akers, was on a 10-day vacation under the provisions of the National Vacation Agreement. On April 10, 1951, Claimant made written request to fill the position of Adjustment Clerk during the vacation period, which request was denied. Carrier assigned one Mary H. Daggett as Adjustment Clerk during the vacation period. Claimant was senior to Mary H. Daggett and claims she was entitled to perform the vacation relief work at the higher rate of pay.

The Organization relies upon that part of Section 10-a, current Agreement, providing:

"Vacancies of fifteen (15) calendar days or less duration shall be considered temporary and, if to be filled, shall be filled (1) by recalling the senior qualified and available off-in-force-reduction employee not then protecting some other vacancy; * * * (2) if there is no such off-in-force-reduction employee available, by advancing a qualified employee in service at the point who makes application therefor. * * *."

The record is clear that there was no available off-in-force-reduction employee. The Organization contends that Claimant was the qualified employee making application for the work and that she was entitled to it under the quoted rule.

The Carrier contends that the controlling rule is found in the National Vacation Agreement, Article 12 (b), which provides in part:

"(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such

absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

We are of the opinion that Article 12 (b), National Vacation Agreement, is the controlling agreement provision. We call attention to the fact that paid vacations came into being with the adoption of the National Vacation Agreement on December 17, 1941. The very instrument which provides for pay during the absence of an employee on vacation while retaining all his rights as if he had remained at work, specifically states that such absence is not a vacancy in his position under the schedule agreement. The awards of this Division hold that Article 12 (b) does not conflict with a schedule agreement provision providing the method of filling short vacancies. Awards 3022, 5192, 5461, 5976.

The Carrier asserts that Mary H. Daggett was a regular relief employee as that term is used in Article 12 (b). The validity of this assertion depends upon the meaning of "regular relief employee" as it is used in the Vacation Agreement. An examination of Article 12 (c) clearly indicates that a "regular assigned relief employee" was not meant. A "regular relief employee" must necessarily be an employee temporarily hired for vacation relief purposes. The record indicates that Mary H. Daggett was hired to do vacation relief work and such extra work as might be available. This the Carrier has a right to do. Mary H. Daggett was a regular relief employee. From November 2, 1950 to May 25, 1951, she had been used on vacation relief work on ten different occasions. This is strong evidence that she was a regular relief employee within the meaning of Rule 12 (b). It is only when a regular relief employee is not utilized that "effort will be made to observe the principle of seniority." It is plain that Carrier could properly use Mary H. Daggett, a regular relief employee, and no question of seniority arises. A denial award is required.

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 this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.