

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(a) Carrier violated the Rules of the Clerks' Agreement at Los Angeles, California, when it failed and refused to allow Out-desk Clerk Harvey L. Moles to displace junior employee K. E. Brown from Assistant Service Clerk Position No. 154; and

(b) Harvey L. Moles shall now be paid a day's pay, in addition to other earnings, each date September 30, October 1, 2, 3, 6, 7, 8, 9, 1953, at the pro rata rate of Position No. 154, and a day's pay each date October 4 and 5, 1953, rest days of Position No. 154, at time and one-half rate instead of straight time allowed on Position No. 140.

EMPLOYES' STATEMENT OF FACTS: 1. An Agreement between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, reprinted January 1, 1953, including revisions, (hereinafter referred to as the Agreement) is on file with your honorable Board and by reference thereto is hereby made a part of this dispute.

2. Rule 34 of the Agreement reads:

"Rule 34—Short Vacancies

(a) New positions and/or vacancies of thirty (30) calendar days or less duration, may be filled without being advertised, at the option of the employing officer. New positions and/or vacancies of doubtful duration, need not be advertised until the expiration of thirty (30) calendar days, in connection with which, so far as practicable, the approximate duration of the work will be given.

Note: Subject to (b) and (c) of this rule.

(b) New positions or vacancies of thirty (30) calendar days or less duration, shall be filled, whenever possible, by the senior qualified unassigned employee who is available and who has not per-

Sections (a) and (b) of Article 12 on Vacation Agreement signed at Chicago, Illinois, on December 17, 1941 (which is made a part of the current agreement by Rule 65 thereof) read as follows:

"12. (a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employe on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

"(b) As employes 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 employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority."

It will be noted that Article 12(b) of the Vacation Agreement defines a vacation absence as not a vacancy under any agreement, and that, therefore, the application of Rule 34(c), Note 2 of the current agreement is limited thereby to the extent that said rule is not applicable to vacation absences. Since Position No. 154 was filled in accordance with Article 12(b) of the Vacation Agreement, Rule 34(c), Note 2 obviously does not support the claim in this docket.

Even if there were a valid basis, the claim presented would not be a proper one because in that event the claimant would be entitled to payment only at straight-time rate of pay under Article 12(a) of the Vacation Agreement, which provides that "carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu therefor. . . ."

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and, therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the provisions of Rule 34 (c) of the Agreement between the parties, Claimant Harvey L. Moles, Outdesk Position No. 140, was entitled to displace Junior Employee Brown from Assistant Service Clerk Position 154, during the period September 30 through October 9, 1953.

Claimant Moles, therefore, should be reimbursed for lose in earnings during the period September 30 through October 9, 1953.

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

That Claimant Moles shall be additionally reimbursed for loss in earnings in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.