

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerk's Agreement at East Buffalo Freight Office, Buffalo, New York when the Carrier failed and refused to assign Mariano Cappuzzo to fill vacancy on position of Car Record Clerk working 10:59 P. M. to 6:50 A. M., during the absence of Joseph Richard, July 7 through July 11, 1952, on vacation, preference having been given to a junior employee, no effort made to observe seniority in filling the vacation assignment, and

That the Carrier shall now compensate Mariano Cappuzzo for the difference if any, between the rate of pay of the position occupied on July 7 through 9th at straight-time rate and what he would have earned had he been assigned to the position sought and for July 10 and 11 at pro rata rate of Car Record Clerk rate of pay. (File 1027.)

EMPLOYEES' STATEMENT OF FACTS: Joseph Richards, Night Car Record Clerk, was scheduled to take his vacation July 7 to 11th, 1952, both inclusive. His position was worked by extra employee Banks from July 7 to 9th, inclusive, and the assignment completed by Miss Theresa Prescott, July 10 and 11th, 1952.

Mr. Mariano Cappuzzo, seniority date August 22, 1948, regularly assigned to Relief Position No. 12 on May 12, 1952, addressed the following letter to Mr. C. F. Henry, Assistant Agent (since retired):

"I would appreciate your considering me for all vacation work in this office. Can you advise me at this time whether you can arrange a schedule for me to follow."

On Monday, July 7, Mr. Cappuzzo was aware that Mr. Banks, seniority date July, 1952, was instructed to work on Car Record Clerk position of J. Richards on vacation. He immediately advised Mr. Cook, Assistant Agent in place of Mr. Henry, that he desired the position while Joseph Richards was on vacation. On denial of his request, he addressed the following letter to Mr. Cook, dated July 7, 1952:

"I hereby submit request to work vacation relief on job being worked by Joseph Richards as Car Record Clerk starting July 7, 1952 until termination of vacation period."

In the light of all of the foregoing, it is clear that the motive behind this claim is to secure to regular employees the right to fill positions of vacationing employees in the same manner as temporary vacancies are filled under Rule 7 of the Schedule Agreement. This, of course, is expressly prohibited by the provisions of Article 12(b) of the Vacation Agreement and decisions of this Board with respect to the same.

The Carrier has established the fact that the use of the extra employees on the vacationer's position did not constitute a violation of the applicable agreement. Therefore, the claim is not justified and should be denied.

The Carrier submits that all data in support of its position in this case has been discussed with or is known to the Organization or the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim concerns the question as to whether Rules 3, 5, 6, 7 and Section 12 (b) of the National Vacation Agreement were violated when claimant's request to fill a vacancy, existing due to the occupant thereof being on vacation, was denied.

The position in question is that of Car Record Clerk. The regular occupant thereof was Joseph Richards. The period involved is July 7 through July 11, 1952.

Richards' position was covered by an Extra Clerk, Ronald Banks, on July 7, 8 and 9. The said Banks was displaced by extra employee Schichtel, who worked the position during the balance of the period in question. Each of the named employees who occupied this position was junior (in seniority) to the claimant.

Claimant was regularly assigned to relief position No. 12. He likewise made written request to fill the vacancy in question. This request was denied. Respondent raises no question as to the qualifications of the claimant to fill the vacancy, contending only that in using extra employees to fill the vacancy, the terms of the effective agreement and the National Vacation Agreement were followed.

Article 12 (b) of the National Vacation Agreement reads as follows:

"(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."

It is well settled that vacation absences do not constitute "vacancies" that must be filled. In some instances, the work of such positions might, at the carrier's discretion, be left undone or portions thereof assigned to other employees. When "Vacation Relief Positions" are created, such vacancies are properly the work of the holders of the positions so created.

However, if the carrier desires to fill the position of an employee on vacation, and there is no (as here) vacation relief employee utilized, Article 12 (b) requires that "effort" be made to follow the principle of seniority.

Claimant here advised respondent of his desire to fill the "Vacation Vacancy" of Employee Richards, thus it cannot be said they lacked knowledge of his availability.

The respondent violated Rule 12 (b) of the National Vacation Agreement when it failed to observe the principle of seniority while filling the position with someone other than the claimant.

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 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1955.