Award No. 8154
Docket No. MW-7843

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

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

(1) The Carrier violated the Agreement when it used Chauffeur William Casey instead of Assistant Track Foremen S. J. Loriano and L. R. Conrad to relieve Assistant Track Foreman John Grimes at Emergency Headquarters, Boston, Massachusetts on July 14, 15, 16, 17 and 18, 1954;

(2) The Carrier further violated the Agreement when it required Chauffeur William Casey to suspend work on his regularly assigned position on July 14, 15, 16, 1954, in order to perform service in the Assistant Track Foreman's class and during hours outside his regularly assigned working hours;

(3) The Carrier further violated the Agreement when it failed and refused to allow Chauffeur Casey pay at the overtime rate for the service performed outside the hours of his regular assignment on July 14, 15, and 16, 1954 and on his designated rest days (Saturday and Sunday) July 17 and 18, 1954;

(4) Assistant Track Foremen S. J. Loriano and L. R. Conrad be paid the exact amount each lost because of the violation referred to in part (1) of this claim;

(5) Chauffeur William Casey be allowed pay at the chauffeur's straight-time rate for an equal number of hours as he was suspended from his regularly assigned chauffeur's position on July 14, 15 and 16, 1954;

(6) Chauffeur William Casey be allowed the difference between what he was paid at the straight-time rate and what he should have been paid at overtime rates for services performed outside of his regularly assigned hours and work-week on July 14, 15, 16, 17 and 18, 1954.

EMPLOYES' STATEMENT OF FACTS: Messrs. J. Grimes, J. Loriano and La Conrad were regularly assigned Assistant Track Foremen at Emer-

OPINION OF BOARD: Both sides embrace award number 5108 in support of their respective positions, and said award does give much support, but not to the extent that it is decisive of the case at hand.

In award 5108 claims (a) and (d) were sustained because Carrier failed to provide a vacation relief worker to take the place of the man on vacation. Carrier sought to justify its position by saying that under Rule 12(a) it would "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 under the provision hereof. * * *" Rule 11(b) provides inter alia "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."

In other words Carrier need not give attention to seniority unless it fails to use "a regular relief employe."

Applying that test to the instant case we must determine whether Casey, who was utilized by the Carrier was "a regular relief employe." Carrier insists that he was, employes say not.

Carrier relies upon Referee's decision on Article 6 of the Vacation Agreement under subheading 2 reading in part as follows: "The term (vacation relief workers) also includes those regular employes who may be called upon to move from their job to the vacationers job for that period of time during which the employe is on vacation." (Parentheses supplied) See Award 7330.

The Carrier member of the Board in his argument before the referee stated that the designation of Casey as a relief worker was done to comply with our Award 5108. The award was announced November 27, 1950. For at least four years thereafter or until the filing of this claim Casey continued to be designated and used as a vacation relief worker without protest from him or the Organization.

We know of no set formula for the designation of a relief worker, and the employes here do not criticize the formula used by the Carrier as such.

At the bottom of page 21 of the Vacation Booklet (Vacation Agreement of December 17, 1941) it is stated "The parties shall agree that if they are unable to reach an agreement **within a reasonable time** upon all the details of the vacation proposal they will submit all disagreements to a Member of the Board selected by them, or to some other third party agreed to by them for final settlement. They shall agree that the decision of any such referee shall be binding upon them as to vacation arrangements and as to the **formula** which shall determine what particular employes shall receive vacations". Emphasis supplied.)

We quote the above language to emphasize the necessity of doing something within a reasonable time," particularly in a situation such as we have here where the Carrier acted in apparent good faith in complying with an award (5108) of this Board.

We are not overlooking employe's final argument that the vacation "agreement cannot be applied in a manner which will cross craft or class lines." quoting Mr. Morse on page 93 of the Vacation Booklet. But after reading Mr. Jewell's comment following the quote we are not persuaded that the language applies to a situation where all the employes are represented by the same Organization as here.

In addition, in Award 6136, involving same rules and Carrier, we said "It will be noted that chauffeurs are expressly excepted from that part of the rule that confines employes' seniority to the sub-departments in which they are employed. The effect of the exception appears to be permit chauffeurs to exercise their seniority rights throughout their seniority districts irrespective of the sub-department in which employed."

This would seem to indicate that under the conditions here at least that it is permissible 'to cross class lines," assuming that to be the rule, which we are not convinced of.

Our conclusion is that the Carrier did not violate the agreement and that this claim should 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 agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 26th day of November, 1957.