

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Carroll R. Daugherty, Referee

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

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

1. Carrier violated the rules of the current Clerks' Agreement when it failed to call Employee L. E. Phillips to perform the work of his position on days when no regular relief employee was available.
2. Employee L. E. Phillips be compensated for eight (8) hours at the penalty rate of time and one-half on the following days: April 18, 19, 25, 26, May 2, 3, 9 and 10, 1953.

**EMPLOYEES' STATEMENT OF FACTS:** Employee L. E. Phillips is regularly assigned to Second Train Clerk Position No. 443 at Bensenville yards, Chicago, Illinois. Position No. 443 is assigned to work from 3:00 P.M. to 11:00 P.M. seven days per week with rest days of Saturday and Sunday.

Employee J. A. Scully was regularly assigned to Relief Position No. 24, which position includes relieving Position No. 443 on Saturday and Sunday. (Employees' Exhibit "A".)

Employee William Ohm is regularly assigned to Yard Clerk Position No. 460.

Employee N. Maze is regularly assigned to Yard Clerk Position No. 542.

On or about April 11, 1953, Employee Scully was removed from Position No. 24, leaving Relief Position No. 24 vacant. Position No. 24 remained vacant for a period of approximately one month. Position No. 24 was re-bulleted on April 27, 1953. No applications were received for the position and a new employee, W. L. Johnston was appointed to the position. See Employees' Exhibits "B" and "C".

*vacancy on his position (Employee Ohm's Position) lend any support to the claim that employee Phillips should have been used to fill Relief Assignment No. 24 (Position 443) on such days. It is the Carrier's position that the use of the various employees, all of whom had properly established seniority under the schedule rules, to fill the vacancies on employee Ohm's position and on employee Maze's position was entirely proper under the schedule rules but we also contend that such question is not before your Honorable Board. In the instant dispute we have the question as to whether or not employee L. E. Phillips, who was assigned to Position 443 Monday through Friday, should have been used to fill Relief Assignment No. 24 (Position No. 443) on the various Saturdays and Sundays included in the claim, and that is the only question before your Honorable Board.*

The claimant was assigned to Position 443 Monday through Friday. On Saturday and Sunday, Position 443 was a part of Relief Assignment 24. The latter position was assigned to employee Scully until sometime in April 1953. When it was known that he was not to return to that position it was rebull-etined and assigned to employee W. L. Johnston. Please see Carrier's Exhibits "A" and "B".

It is the Carrier's position that by reason of employee Ohm being the senior qualified employee making request for the temporary vacancy on Relief Position 24 (Position 443) on Saturday, April 18 and Sunday, April 19, 1953, employee Ohm had the prior right to be used to fill that position on those two days. Therefore, Claimant Phillips has no proper claim that he should have been used to fill Relief Position No. 24 (Position 443) on those days. It is further the Carrier's position that by reason of the fact that employee Maze was the senior qualified employee requesting the temporary vacancy on Relief Position No. 24 (Position 443) on April 25th, 26th, May 2nd and 3rd, he had the prior right to be used on such position and that Claimant Phillips has no proper claim that he should have been used to fill the position on those days. It is further the Carrier's position that when no employee made request for the temporary vacancy on May 9 and 10, 1953 it was entirely proper and in accordance with the schedule rules that the Carrier continue to use extra or unassigned employee O. E. Hasty to fill the temporarily vacant relief position No. 24 as he did on May 8, 1953.

Therefore, there is no basis for the claim which has been submitted in behalf of employee L. E. Phillips and we respectfully request that the claim be denied.

All data submitted herein has been presented to the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** At time of dispute Claimant Phillips was regularly assigned to Clerk Position No. 443 at Carrier's Yards in Bensenville, Illinois. This was a 7-day position, Claimant's assigned days being Monday through Friday, with rest days Saturday and Sunday. These rest days were part of regular 5-day Relief Position No. 24, held prior to this dispute by J. A. Scully. The relief work schedule of Position No. 24 was as follows:

Fridays—On Position No. 435  
Saturdays—On Position No. 443  
Sundays—On Position No. 443  
Mondays—On Position No. 725  
Tuesdays—On Position No. 725  
Wednesdays and Thursdays—Rest days

During Scully's tour of duty on April 11, 1953, an incident arose causing his absence from work beginning April 12. On April 16, 1953, Carrier notified Scully to attend an investigation, which was held on April 21. After said hearing Scully was dismissed from service as of April 24, 1953.

On April 27, 1953, Carrier re-bulletined Relief Position No. 24. No bids having been received, by May 2, the expiration date of bulletin, Carrier by assignment notice dated May 5 appointed W. L. Johnston to Relief Position No. 24. Johnston took over the position on May 11, 1953.

So far as the record shows, Relief Position No. 24 was worked as follows during the period April 12 through May 12, 1953:

Sunday, April 12—Not worked

Monday, April 13— " "

Tuesday, April 14— " "

Friday, April 17—Not worked

Saturday, April 18—W. Ohm, regular occupant of Clerk Position  
No. 460

Sunday, April 19—ditto

Monday, April 20—Not worked

Tuesday, April 21— " "

Friday, April 24—Not worked

Saturday, April 25—N. Maze, regular occupant of Clerk Position  
No. 542

Sunday, April 26—ditto

Monday, April 27— "

Tuesday, April 28— "

Friday, May 1—N. Maze, regular occupant of Clerk Position  
No. 542

Saturday, May 2—ditto

Sunday, May 3— "

Monday, May 4— "

Tuesday, May 5— "

Friday, May 8—Not worked

Saturday, May 9—O. Hasty, extra employe (seniority date  
March 19, 1953)

Sunday, May 10—ditto

Monday, May 11—W. L. Johnston, new regular incumbent

Tuesday, May 12— " " " "

The record also shows that, on the days Ohm was working Relief Position No. 24, his own regular position was protected by J. Thomas, an extra employe; and on the days Maze was working Relief Position No. 24 his regular position was protected successively by extra employes H. Zender and R. Roth.

The record contains photostatic copies of Ohm's application for Position No. 443 on April 18 and 19, the days he worked the rest days of that Position.

The copies say "I wish this temporary vacancy." Similarly with Maze in respect to April 25 and 26. As to Maze's work on No. 443 on May 2 and 3, the photostatic copies say not that he wished to work the temporary vacancy but that he was "willing" and "agreeable" to do so.

The substance of the Employees' contentions is that (1) Relief Position No. 24, a regular 5-day position, having been worked only on certain selected days by Carrier, was not properly filled as such during the period in question, as a temporary vacancy under Rules 9 (f) and 9 (g); (2) Claimants' regular Position No. 443, being a 7-day one, had to be filled on Claimant's rest days; and (3) said rest days of No. 443 having been improperly assigned via the temporary vacancy route in respect to Relief Position No. 24, the work became overtime work, covered by Section 4 of Memorandum of Agreement No. 9 (plus note thereto), that should have been given to Claimant.

Carrier argues that (1) to agree with Employees would be in contravention of Rule 27 (g)(7); and (2) Relief Position No. 24 was properly filled under the temporary vacancy provisions of the Agreement; and (3) Ohm and Maze had the right to withdraw from said temporary vacancy (No. 24) and go back to their regular positions, thus leaving No. 24 unfilled on certain days.

For the purpose of determining the instant dispute the period involved—April 12 through May 10, 1953—may be divided into three sub-periods: (1) April 12, the day Scully's absence from Relief Position No. 24 began, through April 26, the day before Carrier re-bulletined said Position following Scully's discharge; (2) April 27, the date of said re-bulletining, through May 4, the day before said Position was assigned to Johnston; and (3) May 5, the date of said assignment, through May 10, the day before Johnston began work on the Position.

During the first and third of these sub-periods Position No. 24 is to be considered a vacancy of less than 30 days, i.e., a temporary vacancy as defined by Rule 9 (g) and therefore subject to the provisions of that Rule. During the second of these periods the Position is to be considered vacant pending assignment and therefore subject to the provisions of Rule 9 (f).

So far as facts are available from the record, during the first period, Position No. 24 was scheduled for 11 days, and on seven of these was not worked. During the second period the Position was scheduled to work six days and was so worked. During the third period the Position worked on three of the four scheduled days.

The Board holds that there is nothing in the Rules governing temporary vacancies that requires the Carrier to fill such vacancy on every one of its scheduled work days. And even if the facts not disclosed in the record were that Position No. 24 was actually worked by employees other than Ohm, Maze, and Hasty on the days stated above to be ones on which the Position did not work, the Board finds nothing prohibiting this in respect to temporary vacancies. The Board rules further that, given no wish or willingness of working employees to work such temporary vacancy, the Carrier was not prohibited by any Rule from using an extra or furloughed employee such as Hasty to fill said vacancy. In short, the Board does not find that the temporary vacancy on Relief Position No. 24 was improperly filled during the entire period April 12 through May 10, 1953.

Given this decision, it follows that Claimant was not deprived of any rights under the Parties' Agreement. A denial award is in order.

**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:** A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1958.