

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

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

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that:

(1) The Carrier violated the Agreement governing the hours of service and working conditions between the parties when, on February 15, 1955, it failed to fill the vacancy in position of Truckman Job No. TR 32 created by the shift promotion of the regular employe to a higher rated position and continues to violate the Agreement when, on dates subsequent to February 15, 1955, it fails to fill vacancies created by the shift promotion of the regular employes to higher rated positions in the Mail and Baggage Department.

(2) F. S. Wagner shall now be allowed one day's pay at the Truckman rate of \$14.93 per day for February 15, 1955.

(3) * All employes affected by the continued violation of the Agreement on dates subsequent to February 15, 1955, shall be compensated for wage loss sustained.

EMPLOYES' STATEMENT OF FACTS: On February 15, 1955, Sorter-Stower Relief Job No. 15, assigned hours of 4:00 P. M. to 12:00 P. M., rate of pay \$15.89 per day, was vacant because of the illness of the regularly assigned employe J. Raegor. J. Horyn was promoted from his regularly assigned position of Truckman Job No. TR 32, assigned hours of 4:00 P. M. to 12:00 P. M., rate of pay \$14.93 per day, to fill this vacancy.

* NOTE: To be determined by joint check of Carrier's payrolls and such other records that may be deemed necessary to establish proper claimant(s) and amount due.

Mr. Reagor and was paid by the Carrier. Job SR-15 was filled by Truckman Horyn, and his truckman job, TR-32, was left unfilled, the duties of same having been assigned to the remaining employees in the department, as clearly provided for in Rule 46, (d), of the current agreement, and sustained in Awards 5590 and 6075. The Brotherhood has conceded that vacant jobs may be left vacant when sick-leave allowance is involved. Consequently, the grievance and claims of the Brotherhood for February 15, 1955, and thereafter, are clearly without foundation, and same should be denied.

The Carrier so requests.

CONCLUSION: It has been conclusively shown by the Carrier in PART "A" that the issues involved in the instant claim have been previously fully settled on the property when the Carrier for the nth time declined identical ones April 13, 1953, and no action whatsoever was taken by the Brotherhood for a period of **two years**, and same was not appealed to this Division for a period of nearly **three years**. Also, that if the grievance and claims of 1952 and 1953 were not so disposed of, then they are barred from further consideration by this Division by reason of the application of a portion of Section 2 of Article V of the Chicago '54 Agreement; and, therefore, the instant grievance and claims, which are in reality the continuation of those in 1952 and 1953, are likewise barred. In either case, they should be dismissed.

And, further, that same are not supported by existing agreements or Adjustment Board awards, accordingly, they are without merit and should be denied, if not dismissed as requested.

* * * * *

All data herein have been made known to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when on February 15, 1955, the Sorter-Stower position became vacant, because of illness and the Carrier promoted J. Horyn to fill this vacancy, thus creating a vacancy in the regularly assigned position of Truckman Job No. TR 32. The Carrier did not fill the latter vacancy after promoting Mr. Horyn to the Sorter-Stower position but blanked his position instead.

It is the contention of the Organization that the Carrier violated the Agreement between the parties when it failed to fill the position created by the shift promotion of the regular employee to a higher rated position and does continue to violate the Agreement in the Mail and Baggage Department, by blanking the vacancies created by such promotions.

We have in evidence an agreement bearing effective date of July 16, 1945, and Memorandum of Agreement effective date January 1, 1948, between the Northern Pacific Terminal Company of Oregon (Carrier) and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (Organization), which is a part of the current agreement, governing sick leave.

"Rule 46(d):

"In the application of this rule, it is understood that where there is no necessity for a position to be kept up daily it may be blanked, or the duties assigned to the remaining employees in the

department. No overtime, Sunday, or holiday work will be required of the remaining employees by reason of the granting of the sick leave."

The Organization contends that the Carrier's action is a violation of Rule 1(a)---

"In the filling of short vacancies of five (5) calendar days or less, every effort will be made to use employees on a straight-time basis, as outlined below, before resorting to the use of employees on a time and one-half basis.

"(a) Higher rated positions will be filled by promoting the qualified regular employees in seniority order on the shift on which the vacancies occur. Resultant vacancies will be filled by qualified extra men in seniority order."

There is no dispute involved regarding the promotion to the higher rated position of J. Horyn, from his Truckman Job No. TR 32 on the same shift. The dispute arises because of the blanking of Horyn's Truckman position, and claim is also made on behalf of the senior qualified extra employee available "for each occurring violation subsequent to February 15, 1955".

Without our going into the background and history as cited by the Carrier of a number of similar instances where promotions have been made on this property and positions blanked that were not presented to this Board it appears that the only question that we must determine here is "does the Carrier have the right to blank a regular assigned employees position in the Mail and Baggage Department after promoting said employee to a higher rated position on the same shift."

We feel that Rule 46(d) clearly states the understanding between the Carrier and the Organization when it states that "* * * where there is no necessity for a position to be kept up daily it may be blanked, or the duties assigned to the remaining employees in the department. * * *"

This Division has held in Award 5590 "* * * There is no requirement under the 40-hour week agreement that positions as such, that is an individual job assignments, have to be filled every day. * * *"

The Carrier elected to fill Job SR-15, which was vacant because of illness, Senior Truckman Horyn was upgraded thereto in conformity with Rule 1(a). Job TR-32, a regularly assigned position, became vacant by the promotion of Mr. Horyn.

We feel that the Memorandum of Agreement referred to would not alter or change Rule 46(d) of the 1945 agreement between the Carrier and the Organization and that this Rule 46(d) must have been completely acceptable to the parties in this dispute because they have included it verbatim in their latest agreement effective February 1, 1957.

Therefore claim (1) fails as we can find no violation of the agreement. Likewise claims (2) and (3) must fail because of the same reasoning.

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 there was no violation of 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 30th day of June, 1959.