

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**

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated the rules of the Schedule Agreement in the Fruit and Vegetable Department, Kansas City Missouri, when the Bureau failed and refused to assign L. S. Shannon to fill vacancy on positions of Fruit and Vegetable Inspector assigned 8:00 A. M. to 4:30 P. M. during the absence of Inspectors R. W. Parker and H. C. Mize from Monday, November 8, 1954, through Friday, November 19, 1954, for a total of ten working days; no effort made to observe seniority in filling the vacation assignment, and;

(b) On account of the Bureau's unilateral action, regular employe L. S. Shannon be compensated for the ten-day period the difference between his rate of \$12.88 and the Vacation Relief position of \$15.14 per day.

(c) That furloughed employe H. J. Schultz be compensated for the ten-day period at \$12.88 per day.

EMPLOYES' STATEMENT OF FACTS: There is no dispute between the parties that employes R. W. Parker and H. C. Mize, Fruit and Vegetable Inspectors, Kansas City, Missouri, took their third week vacation granted to them under the terms of the National Agreement signed at Chicago, Illinois, August 21, 1954. Their vacations running consecutively from November 8, 1954, through November 19, 1954, for a total of ten working days.

Inspectors R. W. Parker and H. C. Mize maintain their headquarters at Second and Wyandotte or Kansas City Southern Team Track, Kansas City, Missouri. L. S. Shannon, one of the claimants and former Inspector in the Fruit and Vegetable Department, was at this time assigned to a Transit

OPINION OF BOARD: This claim arose when Mr. R. W. Parker and Mr. H. C. Mize, Fruit and Vegetable Inspectors, Kansas City Missouri, took their third week of vacation under the terms of the National Agreement signed at Chicago, Illinois, August 21, 1954.

It is apparent from the evidence that prior to November 8, 1954, it had been necessary for the Bureau at the Kansas City operation, herein involved, to make some reductions in its employees. The two claimants, Mr. L. S. Shannon, a former Fruit and Vegetable Inspector, was reduced to a Transit Clerk position and Mr. H. J. Schultz, a former Transit Clerk, was placed on the furlough list.

Mr. J. A. Pigg, who had been employed by the Bureau as a Fruit and Vegetable Inspector up to the time of his resignation, July 9, 1952, was employed by the Bureau to fill the vacation vacancies that are in dispute.

The Organization relies on Rule 7, Section (e) and Article 12 (b) of the Vacation Agreement, and show to support their contention Awards 7024 and 5255. In reviewing Award 7024, and accountant laid off and his position was finally filled by Carrier under paragraph (a) of the Memorandum of Agreement dated July 3, 1950, which provides that—

“(a) All temporary vacancies caused by regularly assigned employees laying off will be filled by the rearrangement of the remaining regular assigned force in that office, with senior employees being given their choice.”

The Board held that the agreement was violated because the Carrier had to offer the senior employee a choice to accept or reject which was not done in this case and it was further shown that the Carrier had abused his right of discretion and had employed a junior to fill the vacancy.

In Award 5255 it was the Carrier's contention “that Rule 7(e) does not require the Carrier to apply the seniority rules strictly, but in any event it was incumbent upon the Claimant to have made application for the vacancies in the same manner as for other vacancies or positions. * * * and that in this case the Claimant did not make known her desire for the positions until the vacancies had terminated.” The record disclosed that the Organization's Chairman had conferred with the Chief Clerk regarding the position then occupied by the temporary employee, and advised him that Miss Barta should have been used. The Board held that this conference was notice to the Carrier that Claimant desired the temporary position to which her seniority entitled her.

We do not see where the above cases cited by the Organization could have any application in the instant case nor does Rule 7(e) as it pertains to:

“(e) New positions or vacancies of thirty (30) days or less duration shall be considered as temporary and may be filled by an employee without bulletining; if filled, the senior available qualified employee requesting same will be assigned thereto.”

It is our opinion that there is a specific rule, that is applicable in this situation, and that is Section 12(b) of the Vacation Agreement which reads:

“(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.”

The evidence in this case clearly shows that Mr. J. A. Pigg was employed solely for the purpose of providing relief while the regular employee was on vacation as he (Pigg) had been in the past, which would bring him under the requirements of Section (b) as a regular relief employee.

We fail to find any violation of the agreement.

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 Bureau 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 28th day of July, 1959.