

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad Company, that

1. Carrier violated the terms of the Agreement between the parties when on April 7, 1954, and until violation ceased, it failed and refused to permit J. L. Smith to exercise his seniority in accordance with the provisions of Rule 18 (i) of the applicable agreement and displace a junior extra employe occupying a temporary vacancy at Mobile, Alabama.

2. Carrier shall now be required to compensate J. L. Smith for the work he was wrongfully deprived on April 7, 1954 and until the violation ceased, on the basis of 8 hours at the pro rata of pay on each of such days.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties and by this reference is made a part of this submission.

This claim is in behalf of an extra employes, J. L. Smith, who was deprived of his seniority rights under the agreement.

Claimant Smith was working the unassigned second shift position at Meridian on Monday, March 29; Tuesday, March 30 and Wednesday, March 31, 1954. On Monday, March 29, he asked to be assigned to the Third Shift position at Mobile which was to become vacant on Thursday, April 1, the regular assigned employe, H. Beeman, was going on vacation. On April 1, Miss Oglesbee, a junior extra employe, was assigned and began working the vacation vacancy of Mr. Beeman. The Carrier refused to assign Claimant Smith, contending that he was working the Second Shift at Meridian on March 29. However, on Wednesday, March 31, the Carrier notified claimant Smith that he would be required to work the Second Shift position at Mobile in place of Mrs. A. L. Smith who was sick. Claimant J. L. Smith worked the second shift position at Mobile on Thursday, April 1; Friday, April 2; Saturday, April 3 and Sunday, April 4. On Saturday, April 3, claimant Smith informed the Carrier that he would displace Junior extra employe Oglesbee off the Third Shift

that 'effort will be made to observe the principle of seniority.' The rules do not deal specifically with the subject of applying seniority to vacation relief.

"Under these circumstances, we believe that our prior awards would compel a holding that the Vacation Agreement is controlling."

Award 5462—The Order of Railroad Telegraphers vs. Tennessee Central Railway Company, Referee Alex Elson, decided September 17, 1951. In denying the claim, the Board held:

"The facts and issues herein involved are almost identical with those involved in Award No. 5461. We believe the principles therein stated control this case.

"The vacation here involved was to begin on a Monday, April 4. Tarpley, who had been assigned to fill the vacancy at the request of the vacationing employe, went to the station on April 2, 1949, to receipt for agency funds and permit the vacationing employe to leave for his vacation approximately two hours prior to closing time. Claimant, senior to Tarpley, had been filling a vacancy of unknown duration, and was relieved at the end of the work period at 6:00 P.M. on April 2, 1949, the regular employe having reported ready for duty on April 4, 1949. We do not believe that these circumstances should require a holding that the carrier did not make an effort to observe the principle of seniority required by Rule 12(b) of the Vacation Agreement. A vacation plan to work effectively should not preclude one employe from accommodating another as was done in this case."

It seems clear from the Vacation Agreement that absences due to vacations were intended to be treated differently than absences due to other causes. As to absences due to vacations, Article 12(b) specifically provides that such absences are not "vacancies" under any agreement; thus, we have specific language saying that such absences are not vacancies. The Organization is attempting to say that such absences are to be considered as any other vacancy and the position should be filled under rules of the schedule vacancies under any agreement.

The Carrier asserts that the claim is without merit and should be denied.

Carrier reserves the right to make an answer to any further submission of the Organization.

OPINION OF BOARD: The issue in this case is whether the claimant, a senior extra employe, has the right to displace a junior extra employe, who has filled, for more than three working days, the position of an operator on vacation.

This precise issue between the same parties was before this Board in Award 8707. It is not palpably wrong. Hence, it should control this case.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1961.