

Award No. 10169

Docket No. CL-10071

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, at its Atlanta, Georgia, Agency, it improperly required other employes to perform the duties of Gang Foreman from June 25, 1956, through July 8, 1956, while the occupant of the position, Mr. J. E. Hudson, Sr., was on vacation.

(b) As a penalty, Mr. J. E. Hudson, Jr., Relief Clerk, shall be additionally compensated as follows: Monday, June 25, and Monday, July 2, 1956, the difference between the rate of his position (\$15.88) and Gang Foreman's rate (\$16.63); Tuesday, June 26, 1956, Wednesday, June 27, 1956, and Tuesday, July 3, 1956, the rate of Gang Foreman's position (\$16.63); Wednesday, July 4, 1956, the holiday rate of time and one-half the Gang Foreman's rate of \$16.63; Saturday, June 30, 1956; Sunday, July 1, 1956, Saturday, July 7, 1956, and Sunday, July 8, 1956, the difference between pro rata rate of the Gang Foreman's position (\$16.63) and time and one-half the same rate.

EMPLOYEES' STATEMENT OF FACTS: 1. Mr. J. E. Hudson, Sr., regularly assigned to position of Gang Foreman at Carrier's Madison Avenue Transfer, Atlanta, Georgia, was on vacation from June 25 through July 8, 1956. The position is assigned to work 8:30 A.M. to 5:30 P.M. Monday through Friday, Saturday and Sunday being relief days. The position is wage rated at \$16.63 per day.

2. Mr. J. E. Hudson, Jr., is regularly assigned to relief position A-2 which has a work week beginning on Thursday, Tuesday and Wednesday being rest days. Claimant J. E. Hudson, Jr. has a position assigned to relieve the position of Transfer Foreman, \$17.11 per day, on Thursday and Friday, the position of Gang Foreman, \$16.63, on Saturday and Sunday, and Loading Clerk position No. 1, \$15.88, on Monday.

3. Claimant Hudson, Jr., made application to work the position of Gang Foreman during the vacation of the regular occupant thereof. (Employees'

days of the gang foreman and transfer foreman positions as a part of his relief assignment.

During the handling of this claim on the property, the employees alleged that the assistant gang foreman, transfer foreman, and assistant agent were required to perform the duties of the gang foreman position while Mr. Hudson, Sr. was on vacation. Carrier readily agrees that Mr. Going (assistant gang foreman) performed the duties of gang foreman because he temporarily filled that position during the period of the vacancy. Although the transfer foreman is a scheduled employee and receives a rate higher than that of gang foreman, he performed no duties other than those he normally performs during his regular hours. In this connection, the transfer foreman goes off duty at 2:30 P.M., while the gang foreman remains on duty until the transfer closes at 5:30 P.M. The assistant agent supervised the transfer operation during this period in the same manner that he would have done had Mr. Hudson not been on vacation.

In the handling of claims involving money payments, it must be shown that there was a violation of some rule or provision of the agreement which caused claimant to lose compensation that he would otherwise have earned. In this case, there has been neither a violation of the agreement nor any loss of compensation by claimant. For that matter, claimant actually earned \$23.97 more by working his regular relief assignment than he would have earned had he filled the temporary vacancy.

For the reasons stated, this claim is clearly not supported by the rules of the Clerks' Agreement or the provisions of the National Vacation Agreement and should be denied in its entirety. Carrier respectfully requests that the Board so decide.

All pertinent facts and data used by the carrier in this dispute have been made known to the employee representatives.

(Exhibits not reproduced).

OPINION OF BOARD: This is a dispute between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and the Southern Railway Company.

The facts are simply this: J. E. Hudson, Sr., Gang Foreman, working for the Carrier and he went on vacation for two weeks beginning Monday June 25, 1956.

His son, J. E. Hudson, Jr., made application to fill the position of his father while he was on vacation. However, the Agent designated Mr. Going, Assistant Gang Foreman, to fill the Gang Foreman assignment while Mr. Hudson was on vacation.

The complainant contends that having made application he was entitled to fill this temporary vacancy due to the vacation of his father. This claim was filed about one month after Mr. Hudson, Sr., returned from his vacation and the claim was denied on the ground that Mr. Going was several years the senior of Mr. Hudson, Jr., and that Mr. Going had previously occupied a similar assignment having the same assigned hours, work days and rest days. Further that the position of employee on vacation is not bulletined as a vacancy.

An examination of the record will clearly show that the Carrier followed

out the terms of the Agreement and particularly Rules 8, 17 and 46.

This Board is of the opinion that the Agent had the unquestioned right under the Agreement to preserve the principle of seniority and to make such rearrangements that would cause the least disruption of employes or the regular assignments. See Third Division Awards 4533; 6561; 6819 and 6820. In Award 4533 Referee Carter interpreted Rule 5(d) (which became Rule 17 of the current Agreement) as follows:

"It is clear to us that under Rule 5(d) the Carrier can fill temporary vacancies occasioned by leaves of absence or sick leave, or it may blank them, as it sees fit. The note attached to the rule permits the Carrier to use its own judgment as to the employe to be used in case it elects to fill the vacancy, except that it must be an employe holding seniority in the class or group in which the vacancy occurs, or an employe in another group or class who also has seniority in the class or group where the vacancy existed. There is no requirement in this rule that the senior employe is to be assigned; in fact, the inference is that he need not be."

This Board has repeatedly held that mere allegations of violations of an Agreement do not constitute proof. See Awards 9583; 9261; 9222; 8065 and 6359. Since the Organization has failed to prove its contention that either the vacation Agreement or the effective clerk's Agreement was violated as alleged in the Statement of Claim, this Board must deny the claim.

It is very evident that the Claimant was not deprived of any work or compensation as a result of having worked his regular assignment and he actually earned more than he would have made if he had been placed in the position of his father as requested. The claim is therefore, denied in its entirety.

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 Employe involved in this dispute are respectively Carrier and Employe 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1961.