

Award No. 13810

Docket No. CL-13835

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5255) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily deducted eight hours' compensation from the wages of Mrs. R. L. Vaughn, stenographer, Superintendent's Office, Sacramento, California, contrary to the provisions of Rule 66 thereof; and,

(b) Carrier shall be required to compensate Mrs. R. L. Vaughn eight hours' compensation at the rate of Position No. 313 Stenographer for September 6, 1960.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time this dispute arose, Mrs. R. L. Vaughn, hereinafter referred to as the Claimant, was an unassigned employe on Roster No. 1, office of Division Superintendent.

On Friday, September 2, 1960, Carrier called Claimant to a vacancy on Stenographer Position No. 313 for the period September 6 through 26, 1960. Hours of assignment on Position No. 313 were 7:50 A. M. to 4:30 P. M., rest days Saturday and Sunday.

Early on Tuesday morning, September 6, 1960, Claimant requested permission to lay off from Position No. 313 account ill. Permission was granted. She returned to the position on September 7 and performed service thereon each work day thereafter during the period of vacancy.

The above limits of sick leave may be extended in individual meritorious cases and under the conditions specified, but only by agreement of the representatives of the carrier and of the employees." (Emphasis ours.)

was not applicable to the Claimant as the wording in Rule 66 reading "... where the work of any employe is kept up by other employes . . ." can not be applicable to an employe when the employe has not yet assumed the position performing the work involved. The work had not become the work of the Claimant on date of claim because she had not yet taken over the position which performed that work. In this connection the applicable agreement rule obviously relates an unassigned employe's incumbency of any vacancy or new position to the time he is placed thereon. In this connection Note 1 to Rule 34(b) states:

"NOTE 1. An unassigned employe placed on a vacancy or a new position having rest days of Saturday and Sunday will remain thereon until relieved by regular employe or displaced by a senior unassigned employe."

and in the instant case the Claimant had not been placed upon the vacant position on date involved and, therefore, had no status whatever on Position No. 313 on date of claim. Additionally, had another unassigned employe been available to fill the position on date involved, the available unassigned employe would have been used, and Claimant would not thereafter have been utilized on the position unless she displaced thereon under agreement rules.

The emphasized word "deduction" in the above quotation of Rule 66 presupposes that an employe is working a position at the time of his absence. Carrier has clearly established hereinabove that the Claimant had only status of an unassigned employe on date here involved and was not latched to and working a position or holddown position at the time she reported ill and was not entitled to sick time under Rule 66.

In this respect Carrier was not required by any provisions of the current agreement to fill the vacant position on date involved and was not restricted in enjoying the monetary savings derived by not doing so.

CONCLUSIONS

The claim in this docket is entirely lacking in either merit or agreement support and Carrier requests that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Vaughan, an unassigned employe on Roster No. 1 of Carrier's Sacramento Division, was called or notified on September 2, 1960 to fill a vacancy on Stenographer Position No. 313 in the Superintendent's Office at Sacramento, effective September 6 to September 26 inclusive. The hours of assignment on this position were 7:50 A.M. to 4:30 P.M., rest days Saturday and Sunday. Claimant was called for the vacancy under the provisions of Rule 34 (b) of the Agreement, as quoted in the parties' ex parte submissions.

Early in the morning of September 6 Claimant Vaughan reported she was unable to work that day, the first day of the vacancy, because of illness. Having no other unassigned employe available, Carrier did not assign another employe

to the vacancy on that date. Claimant reported for work the following day, September 7, and performed the prescribed duties throughout the remaining period of the vacancy.

The claim is that Carrier was required to pay the Claimant a day's pay for September 6 pursuant to Rule 66, the Sick Leave Rule, due to her illness on that date. Carrier contends it was not obligated to grant the Claimant sick leave pay because she had not yet taken over the position or performed any work thereon as of September 6.

The Board has held in a number of cases that an employe is not assigned to a position until he begins work on such position. (E.g., Awards 2209, 2389, 13459 of Third Division.) Thus as of September 6, 1960 Claimant Vaughan was not entitled to any of the benefits flowing from assignment to the temporary vacancy in question. On that date she was still an unassigned employe on furlough. It follows that she was not entitled to sick leave pay for said date.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.