

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5702) that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement at Savanna, Illinois when it failed to permit employe L. E. Kehoe to exercise his seniority rights to Relief Position No. 17 bulletined during the period he occupied a temporary vacancy.

2. Carrier shall now be required to compensate Employee L. E. Kehoe at the rate of \$19.67 per day for March 24, 27, 28, 29, 30, 31, April 3 and 4, 1964, and for all subsequent working days the violation continues.

EMPLOYEES' STATEMENT OF FACTS: Employee K. A. Eirhart requested and was granted a six-month leave of absence, thereby creating a temporary vacancy on his regular assignment on Position No. 2510 in Seniority District No. 32 which was subject to bulletin under the provisions of Rule 9.

On February 5, 1964 Bulletin No. 18 was issued by Superintendent A. C. Novak advertising the vacancy on Position No. 2510. Copy of Bulletin 18 is submitted as Employees' Exhibit A.

Employee L. E. Kehoe, who has a seniority date in Seniority District No. 32 of September 28, 1961, was awarded the temporary vacancy on Position No. 2510 by Superintendent Novak's Bulletin No. 22 dated February 13, 1964, copy of which is submitted as Employees' Exhibit B.

On February 28, 1964, Bulletin No. 31 was issued by Superintendent Novak advertising Relief Position No. 17. Copy of Bulletin No. 31 is submitted as Employees' Exhibit C.

On March 9, 1964, Bulletin No. 34 was issued by Superintendent Novak awarding Relief Position No. 17 to Employee J. R. Ferris. Copy of Bulletin No. 34 is submitted as Employees' Exhibit D.

On March 24, 1964, Mr. Novak replied to Claimant Kehoe's aforementioned letter of March 22 as follows:

"Savanna, Illinois
March 24, 1964
G-6

Mr. L. E. Kehoe
Yard Clerk
Savanna, Illinois

With reference to your letter 3/22/64 advising that you were giving up Temporary Vacancy No. 2510, which you were assigned 2/13/64, in order to displace J. R. Ferris on Permanent Position Relief Assignment No. 17 effective March 24, 1964, per Rule 9(h).

Do not see where Rule 9(h) would entitle you to displace junior man J. R. Ferris, assigned Relief Assignment No. 17 permanently.

If you give up Temporary Position No. 2510, now held by you on bulletin, you would return to status you held previously to taking Temporary Position No. 2510; therefore, your request is denied.

Superintendent

cc: R. L. Crist
M. B. Cravatta
F. S. Cimino"

Mr. Novak's aforementioned denial of Claimant Kehoe's request resulted in the instant claim.

There is attached as Carrier's Exhibit E copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of June 29, 1964 and as Carrier's Exhibit F copy of letter written by Mr. Amour to Mr. Gilligan under date of August 7, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: A regularly assigned employee of Carrier's requested a six month's leave of absence, creating a temporary vacancy. On February 5, 1964, Bulletin 18 was issued by the Superintendent, advertising this vacancy, Position No. 2510. Claimant Kehoe bid on and was awarded the temporary vacancy on February 13, 1964. On February 28, 1964, Bulletin No. 31 was issued by the Superintendent advertising permanent Relief Position No. 17. On March 9, 1964, a bulletin was issued awarding Relief Position No. 17 to an employee junior in seniority to the Claimant. On March 24, 1964, Claimant Kehoe wrote the Superintendent notifying him that he was giving up Temporary Vacancy No. 2510 to displace the junior employee on Permanent Relief Assignment No. 17, effective March 24, 1964, per Rule 9(h) of the effective Agreement. It is Claimant's contention that Carrier denied to him the right to exercise his seniority rights under the agreement to Relief Position No. 17.

It is the position of the Carrier that when Claimant gave up the position he held by bulletin he would return to a furlough status and, consequently, Rule 9(h) of the agreement would not apply.

The particular portion of the rule involved is as follows:

"(h) When an employee is assigned to a temporary vacancy, the position formerly held will be considered a temporary vacancy. If, prior to the expiration of the temporary vacancy, the employee is disqualified or desires to give up such vacancy, or when the temporary vacancy expires, he will return to his former position provided senior employee has not exercised displacement rights thereon, or exercise seniority rights to any position bulletined during the period he occupied the temporary vacancy. All employees affected by his return will do likewise."

It is the contention of Claimant that under the provisions of Rule 9(h) an employee assigned to a temporary vacancy who desires to give up such vacancy may exercise seniority rights on any position bulletined during the period he occupies the temporary vacancy. To the contrary, it is Carrier's position that once an employee reverts to a furloughed status he could not again exercise displacement rights until he was again affected on a permanent position.

Award 7335 (Coffey) arose out of controversy between these same identical parties. A claim was filed by regular assigned employees because Carrier permitted furloughed employees to displace them. It was urged by Carrier that upon the abolishment of their positions there was no reason why these furloughed employees should not have been accorded the right to exercise their seniority to displace junior employees in the same seniority district. Employees in Award 7335 urged that the rights asserted by furloughed employees only attach in the event it was found by the Board that they were recalled for and working a permanent assignment, contrary to their position here.

The Board stated, in part, as follows:

"After considering all argument found in the docket, we have decided the sole issue to be resolved in this dispute is whether or not an employee recalled from furlough for a Group 3 position may, if the position for which recalled is abolished before the expiration of thirty (30) days, displace a junior employee in the same seniority district."

The Board upheld Carrier's position, and denied the claim.

Though the facts in Award 7335 and this case are not essentially the same, it appears that the principle involved is. Consequently, the Board has established a precedent. If we are to have any consistency in the awards on this property, we then must reach a conclusion based on the principle heretofore established by this Board which in the instant case, under the facts of this case, indicates a sustaining award.

Claimant shall be compensated on a pro rata pay basis for earnings lost because of his being prevented from exercising his seniority rights on the days indicated in the claim from March 24 to April 4, 1964. For any subsequent dates, during the continuance of the violation, he is prevented from exercising his seniority rights he shall, if available, be compensated on the same basis; however, any moneys Claimant otherwise earns through employment shall be offset against such allowance.

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

The Agreement has been violated.

AWARD

Claim allowed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.