

Award No. 14500
Docket No. MW-12013

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed to assign Assistant Section Foreman Harold Sturgeon to fill the temporary position of Section Foreman at Donnellson, Illinois while the regular occupant thereof was on vacation during the period from January 5 through January 16, 1959.

(2) Mr. Harold Sturgeon now be allowed the difference between what he received at the Assistant Section Foreman's rate and what he should have received at the Section Foreman's rate during the period referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant and Walter Whitlock have established and hold seniority on the same seniority district as follows:

Name	Trackman	Section Foreman Assistant
Harold Sturgeon	July 7, 1950	September 16, 1957
Walter Whitlock	April 17, 1929	None

During the period from January 5 through January 16, 1959, the regularly assigned Section Foreman at Donnellson, Illinois was on vacation.

The Carrier assigned and used Mr. Walter Whitlock, who holds no seniority rights as an Assistant Section Foreman, to fill the vacationing Section Foreman's position although Claimant Sturgeon was ready, willing and available to perform such relief service.

Consequently, the instant claim was filed because of the Carrier's failure to observe the principles of seniority as stipulated in the Agreement rules in making this assignment.

The claim was declined as well as all subsequent appeals.

Exhibit "C"—February 19, 1959 —Claim—Vice-Chairman to Roadmaster.
 Exhibit "D"—April 8, 1959 —Denial of Claim—Roadmaster to Vice-Chairman.
 Exhibit "E"—May 11, 1959 —Appeal—Vice-Chairman to Division Engineer.
 Exhibit "F"—June 19, 1959 —Denial of Appeal—Division Engineer to Vice-Chairman.
 Exhibit "G"—June 23, 1959 —Appeal—General Chairman to Asst. Chief Engineer.
 Exhibit "H"—July 21, 1959 —Denial of Appeal—Asst. Chief Engineer to General Chairman.
 Exhibit "I"—August 26, 1959 —Appeal—General Chairman to Chief Engineer.
 Exhibit "J"—September 2, 1959 —Denial of Appeal—Chief Engineer to General Chairman.
 Exhibit "K"—September 9, 1959 —Appeal—General Chairman to Director of Personnel.
 Exhibit "L"—October 1, 1959 —Denial of Appeal—Director of Personnel to General Chairman.

OPINION OF BOARD: During the period January 5 through January 16, 1959, Section Foreman Worrell at Donnellson, Illinois, was on vacation. There was only one employe on the same seniority district holding seniority as a section foreman but not working as such. That employe rejected an offer of assignment to the vacationing foreman's position. The position was filled by Trackman Whitlock. Whitlock held seniority only as Trackman. Claimant held seniority as Trackman and as Assistant Section Foreman in which latter classification he was working. Neither Whitlock or Claimant held seniority as Section Foreman. On February 19, 1959, the Organization filed claim in which it alleged:

"1. That the carrier violated the effective agreement when on January 5-9 and 12-16, all dates inclusive, it did not assign employe Harold Sturgeon to the vacant position of section foreman at Donnellson, Illinois.
 (Emphasis ours.)

The Organization argues that in assigning a Trackman instead of the Assistant Foreman to the vacationing foreman's position, Carrier violated Rule 12 of the basic agreement which reads:

Rule 12. Basis of Promotion.

"(a) A promotion is an advancement from a lower rank to a higher rank.

"(b) Promotion shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail. Assistant Foremen will be given preference in filling vacancies or new positions as Foremen."
 (Emphasis ours.)

and Article 12(b) of the Vacation Agreement which reads:

"Article 12 (b) of the Vacation Agreement reads as follows:

(b) As employes 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." (Emphasis ours.)

Rule 12 is inapposite. It deals with "Promotion" which is not here involved; and, "vacancies or new positions as Foremen." That the absence of the vacationing foreman did not create a vacancy is made certain in Article 12 (b) of the Vacation Agreement.

Length of service or position held do not of themselves vest an employee with any rights. Seniority rights, if any, are vested by the employment contract. We look to and are constrained by the rules of the agreement. Finding nothing in the rules that supports the alleged deprivation of a seniority right, we are compelled to deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1966.