

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

**NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central System (Western District), that:

1. Carrier violated Article 27(o) of the Agreement, beginning on June 2, 1960, when it failed to assign E. L. Baughman to the temporary vacancy on the first shift position of operator-leverman-switchtender at Polk Junction, Pennsylvania, which he had requested on May 19, 1960.

2. Carrier shall now compensate E. L. Baughman for four hours' pay at the Polk Junction rate, which is equal to the 120 miles distance from Sutton, Pennsylvania where Mr. Baughman was required to work on June 2, 3, 4, 5, 6, 9, 10, 11, 12, 12, [sic] 16, 17, 18, and 19 1960.

EMPLOYEES' STATEMENT OF FACTS: O. Siekkinem was the regular assigned first shift operator-leverman-switchtender at Polk Junction. Mr. Siekkinem requested a vacation and was assigned a vacation to begin June 2, 1960. Mr. Siekkinem's work week at Polk Junction began on Monday, with Saturday and Sunday as rest days not covered by a relief position.

Claimant E. L. Baughman, who lived at Polk, Pennsylvania, owned the third shift clerk-operator-switchtender position at Sutton, Pennsylvania. Claimant Baughman, on May 19, 1960, requested the temporary vacancy caused by Mr. Siekkinem's vacation. The Carrier did not permit Claimant Baughman to exercise his rights under the Agreement and diverted him from the temporary assignment of the first shift position at Polk Junction to work on the third shift position at Sutton, Pennsylvania. The Carrier allowed or permitted an employe with less seniority, D. S. Logan, to work the first shift position at Polk Junction although Mr. Logan was qualified to work the third shift position at Sutton, Pennsylvania in place of Mr. E. L. Baughman. As the result of this action by the Carrier Claimant Baughman was required to drive from Polk to Sutton, an additional 120 miles each day, or the equivalent of four hours' driving time.

Nothing was heard from the Brotherhood or the Claimant in reference to this case from December 30, 1960, when the Carrier's final decision was conveyed to the General Chairman, until September 28, 1961, when the Carrier received a copy of the letter, dated September 26, 1961, from Mr. G. E. Leighty, President of the Order of Railroad Telegraphers, to Mr. S. H. Schulty, Executive Secretary of the Third Division of this Board, stating — " * * * the intention of the Organization to file in ex parte with your body within thirty days hereafter * * *."

(Exhibits not reproduced.)

OPINION OF BOARD: Article 27 of the Agreement is captioned "Vacancies, New Positions" and under the sub-caption "Temporary Vacancies" contains the following provisions:

Article 27(o) (3) provides:

"3. A position which is filled by other than the employee regularly assigned thereto will be considered a temporary vacancy, except when employees exchange positions as prescribed in Article 42.

NOTE: This also applies during the time a position is vacant waiting to be advertised or during the time it is actually advertised on the semi-monthly bulletin, if, during such time, it is not filled by the former regular incumbent as provided in Article 27(e) 1."

Article 27(o) (5) provides:

"5. When it is known in advance that a temporary vacancy will exist, the senior qualified applicant who applies before it begins will be placed on it but, if said senior applicant cannot be relieved or, for some other reason, cannot be placed on the temporary vacancy when it begins, he will be allowed to displace the junior temporary incumbent as soon as possible."

Article 25 of the Agreement, in which is included the 1941 National Vacation Agreement, is captioned "Vacations" and paragraph 12(b) thereof reads:

"(b) As employees 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.)

Disposition of the Claim turns on whether Article 27(o) (3) and (5) prevails over Article 25(12b). Petitioner argues that it does. It reasons that since the parties executed a new Agreement, effective January 1, 1955, in which Article 27(o) (3) and (5) is part, this must be construed as in effect striking the phrase emphasized in Article 25(12b), *supra*, which was adopted from the 1941 National Vacation Agreement.

Noting that the January 1, 1955, Agreement includes the 1941 National Vacation Agreement; and, viewing the captions under which the pertinent provisions are set forth, we find no evidence of intent or know of no rule of construction that supports Petitioner's argument. We will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.