

Award No. 15637
Docket No. CL-15902

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5813) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement at Sacramento, California, when it failed to call and use the senior employee to fill a vacancy on Position No. 32 Transit and Switching Clerk; and,

(b) The Southern Pacific Company shall now be required to allow Mrs. B. L. Williams eight hours' additional compensation at rate of Position No. 32, \$21.1624 per day, each date August 20, 21, 22, 23, 24, 27, 28, 29, 30, 31 September 3, 4, 5, 6 and 7, 1962.

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 employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

On Monday, August 20, 1962, the following vacancies were subject to being filled by unassigned employees under Rule 34, Short Vacancies, of the Agreement:

Position	Hours	Rate	Duration
No. 32 Transit and Switching Clerk	7 AM-3 PM	\$21.1624 per day	† 15 days
Compt. Opr.-Clk.	9:30 AM-6 PM	\$20.2124 per day	‡ Indefinite

† Incumbent on vacation August 20 through September 7.

‡ Incumbent off duty account illness.

claim. Copy of General Chairman's response thereto is attached as Carrier's Exhibit G.

(Exhibits not reproduced.)

OPINION OF BOARD: Instead of calling Claimant, senior available unassigned employe, to fill a vacation absence on Position 32 (\$21.1624 per day) commencing at 7 A. M., August 20, 1962, Carrier called a junior unassigned employe. Claimant was called to fill a temporary vacancy caused by illness of the occupant of Position 46, Comptometer Operator-Typist-Clerk (\$20.2124 per day) commencing at 9:30 A. M. that same day. The junior employe remained on Position 32 from August 20 until September 7 when the regular occupant returned from vacation.

Carrier's Exhibit A indicates that the reason given by the Chief Clerk for not calling Claimant to fill Position 32 was that "... it was the opinion that the junior assigned clerk was better qualified to perform the duties of the said position." No such reason is given in Carrier's statement of its position to the Board. Rather, Carrier here states the reason to be that Claimant "... was the only available qualified unassigned comptometer operator" and, therefore, it was necessary to use her on Position 46. In rebuttal the Employes deny that Carrier asserted the latter defense during handling on the property, and we find no such argument in Carrier's letters denying the claim.

In view of Carrier's conflicting arguments and its failure to assert its present defense in its denials of the claim on the property, we conclude that Carrier did not in fact make an effort to observe the principle of seniority in this case and Article 12 (b) of the Vacation Agreement was violated.

Claimant Williams should be reimbursed for loss in earnings during the period August 20 through September 7, 1962. See Award 7019.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.

Keenan Printing Co., Chicago, Ill.

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