Award No. 16275
Docket No. CL-16580

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, 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-6042) that:

(a) The Southern Pacific Company violated the Agreement extant between the parties when, on December 9, 1963, it arbitrarily removed Mr. L. A. Munson from Position No. 26, Yard Clerk, Klamath Falls; and,

(b) The Southern Pacific Company shall now be required to allow Mr. L. A. Munson eight hours' additional compensation at rate of Position No. 26, Yard Clerk, each date December 10, 11, 12, 13, 1963; and the difference between pro rata and rate and one-half of Position No. 21, Clerk-Baggageman, each date December 9, 10, 11, 12, 13, 1963; and,

(c) The Southern Pacific Company shall now be required to allow Mr. J. L. Bratton eight hours' additional compensation at rate and one-half of Position No. 21, Clerk-Baggageman, each date December 10, 11, 12, 13, 1963; and,

(d) The Southern Pacific Company shall now be required to allow Mr. J. V. Morley eight hours' additional compensation at rate and one-half of Position No. 26, Yard Clerk, each date December 10, 11, 1963.

(e) The Southern Pacific Company shall now be required to allow Mr. A. S. Breneman eight hours' additional compensation at time and one-half rate of Position No. 26 each date December 12 and 13, 1963.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions (hereinafter referred to as the Agreement) between

(Claim a-c): Petitioner's Statement of Claim, identified as Items (a) and (c), was initially handled by letter dated January 13, 1964 (Carrier's Exhibit F), from Petitioner's Division Chairman to Carrier's Division Superintendent, submitting a claim in behalf of J. L. Bratton (hereinafter called Claimant Bratton) for eight hours at the applicable overtime rate of pay on Position No. 21, Clerk-Baggageman for each date, December 10, 11, 12 and 13, 1963. By letters dated March 7, 1964 (Carrier's Exhibit G), Carrier's Division Superintendent denied the claim and by letter dated March 24, 1964 (Carrier's Exhibit H), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated April 21, 1964 (Carrier's Exhibit I), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated October 29, 1965 (Carrier's Exhibit J), the latter denied the claim.

(Claim a-d and e): Petitioner's Statement of Claim identified as Items (a)-(d) and (e) was initially handled by letter dated January 10, 1964 (Carrier's Exhibit K), from Petitioner's Division Chairman to Carrier's Division Superintendent, submitting claim in behalf of J. V. Morley and A. S. Breneman. For Claimant Morley, claim is made for eight hours at the applicable overtime rate of Position No. 26, Yard Clerk, for each date, December 10 and 11, 1963, and for Claimant Breneman, claim is made for eight hours at the applicable overtime rate of Position No. 26, Yard Clerk, for each date, December 12 and 13, 1963. By letters dated March 7, 1964 (Carrier's Exhibit L), Carrier's Division Superintendent denied the claim, and by letter dated March 24, 1964 (Carrier's Exhibit M), Petitioner's Division Chairman gave notice that the claim would be appealed.

By letter dated April 23, 1964 (Carrier's Exhibit N), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated October 29, 1965 (Carrier's Exhibit O), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Yard Clerk Hobbs went on vacation for the period December 2 through 13, 1963. Claimant Munson was called from the guaranteed Extra Board to fill Hobbs' position No. 26 on December 5 and 6. The next two days, Saturday and Sunday, December 7 and 8, were rest days. The next day Munson was removed from Position No. 26 to a new poition; the rest days for Position 26 were changed to Sunday and Monday, December 8 and 9; and, on December 10 Hobbs returned from his vacation and worked thereon for the balance of his vacation period.

The Employes filed the instant claim asserting that the Carrier violated the parties' vacation agreement by returning Hobbs to service before his vacation period ended; that Article 6 requires the Carrier to "hire" a relief worker to handle the vacationing employe's work if it cannot remain undone; and that there was no emergency to justify recalling Hobbs and relieving his replacement Munson, who had rights to retain the position under Rule 34(b).

The Carrier asserts that Hobbs was entitled to cut short his vacation and return to work if both he and the Carrier were so willing. In this case

they were, and he was paid the appropriate rate for so doing. It argues that since under Rule 12(b) vacations do not constitute "vacancies", there is no basis to the claim that Munson had vacancy rights under Rule 34(b) which were improperly denied him. Finally, it points out that none of the other claimants' rights had been violated, and even if they had been, the claimants would be entitled only to lost earnings.

The essential question is whether an employe who fills a position under the terms of Rule 34(b) is protected against the return of a vacationing employe.

Rule 34(b) of the Parties' Agreement, under the heading, Short Vacancies, specifies the manner in which "new positions or vacancies of thirty (30) calendar days or less duration, shall be filled. . . ." Pursuant to that provision, certain employes are given rights to such positions. Claimants in this case rely on that provision, and the notes thereto, to support their claim that Hobbs' return to work deprived them of those rights.

However, Rule 12(b) of the vacation agreement specifically states in reference to vacations that "such absences from duty will not constitute vacancies in their positions under any agreement."

This Board has upheld the interpretation of that rule in many cases.

> "In the face of the clear and unqualified language that the contracting parties have used in that article, it would be highly improper for us to read exceptions into it based on outside information or our own conception of what the parties really wished to provide." (Weston 8707)

The Organization asserts that the Carrier itself has overriden the language by its establishment of a policy following Rule 34(b), in filling vacation vacancies. We find this argument insufficient to overcome the clear language of Rule 12(b), particularly in view of the language used in the policy statement, which indicates that the "principles" of Rule 34 were to be followed in filling these positions in order to maintain consistency in placement of personnel. This does not mean that the parties have abrogated their rights and responsibilities under Rule 12(b) of the Vacation Agreement.

Accordingly, we conclude that the claimants' rights under Rule 34(b) did not provide protection against a vacancy, such as here, created by a vacationing employe.

The primacy of Rule 12(b) in this case requires that the claim be denied.

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 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 2nd day of May 1968.

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