

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

PACIFIC FRUIT EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6386) that:

(a) The Company violated the Agreement at Kansas City, Missouri, when it filled a two-day vacancy on Yard Clerk Position K-22 under the provisions of Rule 6(a) 4, Note 2 thereof, instead of by the senior available and qualified regular assigned employee; and,

(b) The Company shall now be required to allow Mr. Wilbur E. Hartman compensation at time and one-half rate instead of straight time paid for service performed on Position K-22 each date January 23, 24, 1965; and,

(c) The Company shall now be required to allow Mr. C. E. Jones eight hours' additional compensation at time and one-half rate of Position K-22 each date January 23, 24, 1965, account not called thereto instead of junior employee Wilbur E. Hartman.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date June 1, 1965, including subsequent revisions (hereinafter referred to as the Agreement) between the Pacific Fruit Express Company (hereinafter referred to as the Company) and its employees represented by the Brotherhood of Railway, Airline 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.

Immediately prior to the time this dispute arose the involved employees were assigned as follows:

| Employees         | Hours    | Position   | Days Off  |
|-------------------|----------|------------|-----------|
| Robert L. Sukraw  | 12MN-8AM | K-2        | Tues&Wed  |
| Wilbur E. Hartman | 12MN-8AM | Iceman     | Mon&Tues  |
| C. E. Jones       | 8AM-4PM  | Chf Yd Clk | Wed&Thurs |

these claims to Brotherhood Representative, Mr. C. F. Bignall, Omaha, Nebraska.

(COMPANY'S EXHIBIT D) Letter dated April 19, 1966 from the Company's Manager of Personnel, San Francisco, California declining appeal from General Chairman J. E. Weaver in the case of Claimant C. E. Jones.

(COMPANY'S EXHIBIT E) Letter dated April 20, 1966 from the Company's Manager of Personnel, San Francisco, California declining appeal from General Chairman J. E. Weaver in the case of Claimant W. E. Hartman.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The incumbent of Clerk Inspector Relief Position "E" was scheduled for vacation in the period January 25 to February 5, 1965.

Employee Sukraw, incumbent of Position K-22, requested a leave of absence for January 23 and 24, 1965, to attend naval reserve training.

On January 19, 1965, Carrier bulletined the forthcoming temporary vacancy, for vacation relief on Relief Position "E" for the period from January 25 to February 5. Employee Sukraw applied for the vacancy, again reiterating his request for a leave of absence from his position K-22 on January 23 and 24. His applications for leave from Position K-22 on January 23 and 24; and his application to fill the temporary vacancy on Relief Position "E" from January 25 to February 5 were accepted. Whereupon Carrier advertised a continuous vacancy on Sukraw's Position K-22 from January 23 to February 5. Claimant Hartman successfully applied for this vacancy.

It is the contention of Clerks that the two days' leave granted Sukraw to attend naval reserve training constituted one vacancy of two days or less in his position K-22; and, his assignment to fill the vacation vacancy on Relief Position "E" constituted a separate and distinct vacancy on position K-22.

In its Submission, Clerks state:

"The Division's task here is an easy one. The Employees contends that two vacancies existed, the Company but one. If it decides that the Employees are correct, both claims must be allowed as presented. If it rules that there was only one vacancy, then claims must fail."

At the time Carrier advertised the temporary vacancy in Position K-22 it knew there would be a continuous vacancy to be filled in that Position from January 23 to February 5. Our study of the rules of the Agreement reveals no provision that a continuous vacancy is qualified in any manner by the cause or causes giving rise to the vacancy. We, therefore, find that: (1) only one continuous vacancy existed on Position K-22 and it was properly advertised as such by Carrier; and (2) both claims must 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 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 the Agreement was not violated by the Carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1968.