



Award No. 17114

Docket No. 17842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Colorado and Southern Railway Company that:

- (a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rules 30 and 32, when it failed and/or otherwise refused to fill a vacancy from June 5, 1967, until July 3, 1967, while Division Lineman H. C. Ross was in the hospital and convalescing from an operation.
- (b) Signalman William Ballman, Assistant Signalman Jack Jordan, and Signal Helper William Barrett be made whole for the loss in wages suffered between their hourly basic rates and the hourly basic rate of pay of the Division Lineman, Cheyenne, Wyoming, computed on an 8-hour day, 6-day per week basis, from June 5, 1967, to July 3, 1967, inclusive.

[Carrier's File: SG-7.]

EMPLOYEES' STATEMENT OF FACTS: Because of illness of H. C. Ross, headquartered at Cheyenne, Wyoming, a vacancy existed on his position of Division Lineman from June 5 to July 3, 1967, or 28 days.

Vacancies have been filed under provisions of Rules 30 and 32 of the Agreement in such a manner as to prompt the Local Chairman to state, " * * * Rules 30 and 32, of the April 16, 1944 Agreement between the Colorado & Southern Ry. Co. and the Brotherhood of Railway [sic] Signalmen, have predicated a historic and traditional precedent, relative to vacancies and sick leave from April 16, 1944 until the unilateral and arbitrary blanking of the vacancy at Cheyenne, Wyoming by the Colorado & Southern Railway Company on June 5, 1967." This statement was not disputed by the carrier.

Rule 32 of the Agreement between the Colorado and Southern Railway Company and the Brotherhood of Railroad Signalmen reads as follows:

"RULE 32. Vacancies of less than thirty (30) days' duration will be filled by the Management without bulletin. Senior available qualified extra men will be used."

Because of pole line damage resulting from an ice storm, the signal gang to which the three named claimants were members was thoroughly occupied and required to work overtime as a result of the storm damage, consequently, there was no "... available qualified extra men ..." as contemplated in Agreement Rule 32, thus the agreement does not require filling such vacancy.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether or not Carrier violated Rule 32 of the Agreement when it failed to fill a position temporarily vacant for less than 30 days, due to illness of the regular occupant thereof.

Rule 32 provides:

"Vacancies of less than thirty (30) days' duration will be filled by the Management without bulletin. Senior available qualified extra men will be used."

This Board has held on numerous occasions that Management in regard to manpower requirements has the sole prerogative to determine in its judgment whether or not vacant position is to be filled, unless forbidden by law or contract. See Award Nos. 12358, 12686, 14252, 15046, 15633 and many others. Finding nothing in the agreement which requires Carrier to fill the temporarily vacant position in question, we must 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Shulky
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.

Dissent to Award No. 17114

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The Majority, Carrier Members and Referee, have here held that the mandatory words "Vacancies * * * will be filled * * *" do not mean what they say. The Awards cited notwithstanding (and they are generally distinguishable), it seems to us that words should be given their ordinary meaning. Also see the dissent in Award No. 12358.

Award No. 17114 being in error, I dissent.

/s/ W. W. Altus, Jr.
W. W. Altus, Jr.
For Labor Members