



Award Number 17594

Docket Number CL-18194

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6559) that:

1. The Carrier violated the rules of the Agreement extant between the parties when it stepped up a junior employe, Mr. W. K. Downard, to fill the position of Chief Clerk at Stockton Yard, California while Mr. Calcaterra was on vacation during the period August 5 to 27, 1967, thereby violating the seniority rights of Messrs. H. L. Ross, L. Daniel, B. N. Gage, and C. C. Skinner, all of whom are senior to Mr. Downard.
2. Mr. H. L. Ross shall be allowed a minimum day of eight hours at the overtime rate for August 7, 14, and 21, 1967.
3. Mr. L. Daniel shall be allowed a minimum of eight hours at the rate of time and one-half for August 13, 20, and 27, 1967.
4. Mr. B. N. Gage shall be allowed the minimum of eight hours at the rate of time and one-half on August 10, and 11, 1967.
5. Mr. C. C. Skinner shall be allowed eight hours at the rate of time and one-half for August 8, 9, and 15, 1967.

EMPLOYEES' STATEMENT OF FACTS: Chief Clerk, P. J. Calcaterra was on vacation from August 5 to 27, 1967 and Demurrage Clerk, W. K. Downard was moved from his regularly assigned position of Demurrage Clerk to fill the position of Chief Clerk during Mr. Calcaterra's absence on vacation. Clerk Downard was junior to each of the claimants and Carrier's action in stepping him up to fill the position of Chief Clerk on the days involved had the effect of depriving the claimants of their seniority rights to fill the position of Chief Clerk on an overtime basis on the dates specified in the claim. Claim was filed through Local Chairman, Earl P. Miller's letter of October 2, 1967 addressed to Agent H. K. Reese, Employees' Exhibit "A".

Claim was declined by Mr. Reese through his letter of October 26, 1967, Employees' Exhibit "B".

Claim was thereafter appealed by Local Chairman Miller to Superintendent J. C. Luser through his letter of December 12, 1967, Employees' Exhibit "C".

"Article 12 (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."

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim arises as a result of Carrier assigning an employee to fill a position during vacation, claimants are employees senior to the one who filled the position and who had declined the assignment for the entire period but who made known their willingness to fill the "vacancy" at such times as it did not conflict with the performance of their regular employment. The question involves the application of the following provision of the controlling agreement:

"Rule 29. Employees covered by these rules shall be in line for promotion. Promotion, assignments and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. When an employee junior to other applicants is assigned to a bulletined position, the senior employees making application will be advised the reason for their non-assignment if they request such information in writing and file it within 15 days from date of assignment."

Also the following rules under the Supplement *** Vacation Agreement *** are involved:

"Rule 12. (a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof. . . ."

(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."

It is the contention of the Organization that strict compliance with Rule 29 and in accordance with past practices of the Carrier requires that vacancies created by vacation be filled by seniority on a day to day basis. The Carrier contends that Rule 12 (a) and (b) of the Vacation Agreement of December 17, 1941, applies and that it was free to assign the work to a junior employee after having offered the full vacation period to claimants.

"It is not the purpose of the Vacation Agreement to impose on the Carrier additional half time penalty pay during an employee's vacation absence. If no extra qualified employee is available and if the principle of seniority is preserved, the Carrier may arrange his work force in such a manner that will enable him to operate efficiently. It goes without saying, that in arranging his work force, the Carrier may not penalize the employees transferred and may

not contravene any specific terms of the Agreement. We fail to find anything in the present Agreement which prohibits the Carrier from assigning a regular employe under these circumstances to temporarily replace an employe on vacation" Award No. 10957 (Dolnick)

In as much as the claim arose as a result of filling a vacation vacancy, we conclude that Rules 12 (a) and (b) are the applicable rules and that to require the Carrier to fill these vacancies in the manner proposed by the Organization, paying time and a half to each of the claimants would be in conflict with Rule 12 (a) of the Vacation Agreement which reads in part as follows:

" . . . a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof."

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. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1969.