Award No. 18709
Docket No. CL-19119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

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PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6887) that:

(1) Carrier violated the Agreement between the parties on the date of May 12 through 16, 1969, when it improperly filled the vacation assignment of Gateman R. G. Carleton.

(2) Carrier be required to compensate furloughed Gateman, Mr. J. Wiseman, the proper employe, for eight (8) hours at pro rata rate for each day May 12 through 16, 1970.

EMPLOYES' STATEMENT OF FACTS: On the 12th day of May 1969, Gateman, Mr. R. G. Carleton, regularly assigned on the 3:59 P. M. to 11:59 P. M. shift with Saturday and Sunday as rest days, began a five (5) day vacation running through Friday, May 16, 1969. Carleton held one of two Gateman positions assigned during the period 3:59 P. M. to 11:59 P. M. on the claim dates.

The Carrier utilized Ushers G. A. Sprenger on the dates of May 12, 13 and 16, 1969 and H. F. Cross on May 14 and 15, 1969 to perform the service required on the position of the vacationing employe, by promoting them as extra gateman under Appendix 4 of the Agreement of April 5, 1939.

The Employes filed claim on behalf of the senior furloughed Gateman, Mr. J. Wiseman, based on the contention that he should have been called to fill the vacation assignment, since over 25% of the work was spread over the remaining employes necessitating either (1) hiring of a regular relief or (2) filling under the provisions of Appendix G of the Agreement. (Employes' Exhibit No. 1, pages 1, 2 and 3).

The Station Master responded on August 29, 1969, denying the claim. (Employes' Exhibit No. 2).

The claim was subsequently appealed to the Superintendent on October 6, 1969 (Employes' Exhibit No. 3) and denied by him following conference on October 30, 1969 (Employes' Exhibit No. 4).

On December 16, 1969, appeal was taken to the highest officer of the Carrier (Employes' Exhibit No. 5). A decision was rendered by him on January 23, 1970, concurring in the previous denial decisions (Employes' Exhibit No. 6).

Final conference was held on August 27, 1970, without resolving the dispute. It was agreed in this conference that the claim here filed would serve as a pilot case in similar claims on file, one of which was referred to in Carrier's final decision letter of January 23, 1970 (Employes' Exhibit No. 6).

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** Gateman R. G. Carleton held a regular gateman position, 3:59 P. M. to 11:59 P. M., with rest days Saturday and Sunday. Mr. Carleton took one week of his vacation from May 12 through 16, 1969. During his absence his position was blanked and all gateman work was performed by the remaining gateman force and by Ushers (Red Caps) who have a contract right to perform work as gatemen.

Claim was submitted on July 7, 1969 on behalf of R. J. Wiseman for additional compensation on May 12 through 16, 1969, account not called to fill Mr. Carleton's vacancy while claimant Wiseman was temporarily transferred to the Mail and Baggage Department.

The claim was handled in the usual manner and denied by final appeals officer on January 23, 1970.

**OPINION OF BOARD:** Employes contend in this dispute that while regularly assigned Gateman, Mr. Carleton, was on vacation May 12, 13, 14, 15 and 16, 1969, Carrier improperly filled his vacation vacancy by utilizing the services of two Ushers who, Carrier contends, were so used under the provisions of Appendix 4 of the Ushers' Agreement effective April 5, 1939 between the parties. Petitioner points to the parties' Agreement effective October 1, 1942 under which the positions of Gatemen are covered; that, under the latter Agreement, Appendix G was consummated, the purpose of which was to govern the filling of short vacancies in Seniority Classes 2 and 3, Passenger Department, paragraph (C) — Vacation Short Vacancies reading:

> "(1) Short vacancies created by employes being on vacation shall be filled by regularly assigned vacation relief employes.
>
> (2) When vacation relief positions are not established, or when vacation relief employes are absent, the rules of this agreement shall apply."

The Employes contend that, since there was no regularly assigned vacation relief employe utilized, the Carrier was obligated to look to the other rules of this (meaning Appendix G) Agreement in filling the Gateman's position since Carrier found it necessary to fill it. They cite the following provisions thereof:

"(A) Short vacancies occurring because of the absence of an employe having a regular assignment (other than a regular relief assignment):

(1) Call available furloughed employes in seniority order who do not have 40 hours work in their work week."

Mr. J. Wiseman was the senior furloughed Gateman in whose behalf claim was filed. Based on the above facts, we will sustain Paragraph 1 of the claim.

The Record reveals that Mr. Wiseman was a "protected employe" under Article II, Section 3 of the February 7, 1965 National Agreement and, as such, was subject to call to service to fill vacancies. Carrier utilized him to handle mail in its Mail and Baggage Department although he held no seniority in that Department and did not fill a vacancy during the period of this claim. He, therefore, should have been utilized in the capacity to which his seniority entitled him, that of Gateman during the absence of the occupant of that position, the position upon which his protected rate was based. Under the circumstances, therefore, since claimant sustained no wage loss during the period of this claim, we will deny Paragraph 2 of 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 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 Carrier violated the Agreement to the extent outlined in the Opinion.

AWARD

Claim 1 sustained, Claim 2 denied, in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1971.

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