



Award No. 18798
Docket No. MW-19245

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, from November 25 through 31, 1968 and from December 23 through 31, 1968, it used Trackmen Kee, Vann and Humphrey instead of Trackman C. Marlow to perform service as a welder helper. (System File T-38-T-69/Case 621)

(2) Trackman C. Marlow be allowed the difference between the welder helper's rate of pay and the trackman's rate of pay for each work day and holiday within the periods referred to in part (1) hereof.

EMPLOYES' STATEMENT OF FACTS: The facts pertinent to the instant dispute were clearly set forth within correspondence reading:

LETTER "A"

"January 6, 1969

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Mr. H. D. LeRoy
Division Engineer
Illinois Central Railroad
545 So. Main
Memphis, Tenn. 38103

Dear Sir:

Under date of December 29, 1968 section laborer Charles Marlow assigned to Section 10, Tennessee Division, with a seniority date 1-10-66, in which he advises he is charging Supervisor Turner and you, as Division Engineer, as using discrimination in the Track Department on your division; which he further advises that Welder

The claimant was available and would have performed service as a welder helper if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

I. FACTS AND ISSUES

On May 23, 1968 Track Laborer Charles Marlow presented a written request with the Division Engineer for consideration when the next welder helper vacancy occurred. The Division Engineer accepted this request and retained it on file for reference and consideration when such a vacancy occurred.

On November 25, 1968, a welder helper took one week of his assigned vacation. His position was blanked and the welder to whom he is assigned continued working during the vacation period without a helper as is the custom of the Carrier. During the vacation period, situations arose in which

on those days without the necessity of any relief, particularly, where as here, the employees were of the same class, performed the same type of work, receive the same pay and are carried on the same seniority roster."

This Award cited with approval in Award 16851. See also Award 6946 which states: "We have repeatedly held, and correctly we think, that the assignment of regular relief positions and of work on unassigned days is not a condition precedent to the staggering of work weeks." See also Award 12788.

Having found that the work was not improperly assigned to the Rate and Bill Clerk position and in concurrence with the many awards of this Board we hold that the Agreement was not violated.

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.

AWARD

Claim denied.

- 3) The vacation absences were blanked in accordance with the National Vacation Agreement and were **not** filled with the trackmen named in the claim.

The issues are whether the rules require the company to comply with the claimant's written request for assignment to a welder helper's position when a vacancy occurred. If so, the Board must determine whether a vacancy existed during the claim period. Finally, if the answers to both questions are in the affirmative, the Board must determine whether the company filled the "vacancies", thereby damaging the claimant.

The correspondence is attached as Company's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: It is well settled that absences for vacation purposes are not vacancies under the Agreement.

There is no probative evidence establishing that the work performed by the trackmen, which gave rise to the claim, is the exclusive work of welder helper.

The Petitioner has not proved a violation of the Agreement and the claim will 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1971.