

Award No. 18947
Docket No. SG-19004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN
THE ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad Company that:

On behalf of Assistant Signalman John Bereza, Jr., Chicago Division, for the difference in pay he received and that paid to Signalman John Prater, including overtime if any, for the period Mr. Prater was used to relieve P. H. Behrendt during vacation period of September 18 through 22, 1968.

(Carrier's File: 135-194-89 Spl.; Case No. 239 Signal.)

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the present parties bearing an effective date of August 1, 1958, Rule 501 (b) of which provides:

"Temporary positions or vacancies of five days or less which are required to be filled will be filled by the senior available employe holding seniority in the class who may be working in a lower class. If no such employe in a lower class, an employe of the class next below may be used observing seniority. When it is known such position or vacancy will be of more than five days' duration, it will be offered employes (who may be working in a lower class) holding seniority in the class in seniority order. If no such employe in a lower class, it will be offered employes in the class next below in seniority order. If no such employe desires to fill the position or vacancy, the junior employe of such lower class may be required to fill it."

Signal Maintainer P. H. Behrendt observed a vacation period September 18 through 22, 1968. The Carrier used Signalman John Prater to work Behrendt's position in vacation relief. The Carrier's action being contrary to the procedure set out in Agreement Rule 501 (b), claim for a difference in pay between what he received and what he would have received if used in the subject vacation relief was filed on behalf of Assistant Signalman John Bereza, Jr., Claimant, who was assigned to a position at Burnside Signal Shop, and who was the senior available Assistant Signalman.

This dispute was handled on the property in the usual manner, up to and including conference with the highest officer of the Carrier designated to handle such disputes, without settlement.

CARRIER'S STATEMENT OF FACTS:

I. FACTS AND ISSUES

Signal Maintainer Paul H. Behrendt was assigned a vacation from September 18 to September 22, 1968. His position was filled by Signalman John Prater, the senior available man in the same class.

The union filed claim on behalf of John A. Bereza, Jr., an Assistant Signalman working in the Signal Shop at Chicago, for the difference in earnings between the rate of his regular position and that paid to Signalman Prater while filling the maintainer's position during the incumbent's vacation.

The union contends that Rule 501(b) of the agreement requires that the position be filled by the senior employe in the class below that of the vacancy, unless there is an employe holding seniority in the same class as the vacancy, working at the time in a lower class.

The company disagrees, and contends that Rule 501(b) **permits**, but does not require, the use of an employe in the class below. The company also contends that even if Rule 501(b) required a certain manner of filling vacancies, Article 12(b) of the December 17, 1941 Vacation Agreement provides that rules governing the filling of vacancies do not apply to positions filled because of vacations.

There are, then, two issues for the Board to decide. First, does the Rule **require** that the position be filled by a man in the next lower class? If so, does this Rule apply to the filling of vacation "vacancies"?

The correspondence is attached as Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: Signal Maintainer P. H. Behrendt observed a vacation period September 18 through September 22, 1968. Carrier used Signalman John Prater to work Behrendt's position while he was on vacation. Prater has seniority in the same class. The Organization alleges that this action violated Rule 501(b) of the Agreement between the parties which allegedly required that Assistant Signalman John Bereza, Jr., Claimant herein, be utilized. Rule 501(b) reads as follows:

"(b) Temporary positions or vacancies of five days or less which are required to be filled will be filled by the senior available employe holding seniority in the class who may be working in a lower class. If no such employe in a lower class, an employe of the class next below may be used observing seniority. When it is known such position or vacancy will be of more than five days' duration, it will be offered employes (who may be working in a lower class) holding seniority in the class in seniority order. If no such employe in a lower class, it will be offered employes in the class next below in seniority order. If no such employe desires to fill the position or vacancy, the junior employe of such lower class may be required to fill it."

The Organization argues that the action of the Carrier had the effect of creating a temporary position. With this we cannot agree. This is simply a matter of filling the position of a vacationing employe which is governed by Article 12(b) of the National Vacation Agreement which reads as follows:

"As employes 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 employe is to be filled and a regular relief employe is not utilized, effort will be made to observe the principle of seniority."

The record indicates that the Carrier properly followed the above quoted rule and made every effort to observe the principle of seniority.

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 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 14th day of January 1972.