

Award No. 19029
Docket No. CL-19273

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6922) that:

1. That Carrier violated the Clerk's Agreement by failing and refusing to fill the position of Typist-Calculator-Comptometer Operator No. 42, February 16 and 17, 1970, by rearranging regular forces, pursuant to Rule 25.

2. Clerk J. F. Felder now be compensated for difference in rate of pay, \$2.60 each date, a total of \$5.20.

EMPLOYES' STATEMENT OF FACTS:

1. Clerk J. F. Felder is regularly assigned to position of Mail-File Clerk No. 45, 8:00 A.M. - 5:00 P.M., Monday through Friday, a five (5) day per week position, rate of pay is \$23.70 per day.

2. Typist-Calculator-Comptometer Operator No. 42 is assigned five (5) days per week, Monday through Friday, 8:00 A.M. - 5:00 P.M., rate of pay is \$26.30 per day and the regularly assigned occupant is Clerk W. C. Buck.

3. Clerk W. C. Buck was absent due to illness February 16, 17, 18, 19 and 20, 1970.

4. The Carrier did not fill the position February 16 and 17, 1970, however, when the Division Chairman advised local officials that Clerk W. C. Buck was not receiving sick leave pay pursuant to Rule 57 of the Agreement, and that his temporary vacancy must be filled pursuant to the provisions of Rule 25 and in particular Paragraph (b) of that rule, for there is no agreed upon Extra Board for the employees in that office, the Carrier immediately filled Clerk W. C. Buck's temporary vacancy February 18, 19 and 20, 1970, thereby, complying with Rule 25 (b) of the Clerk's Agreement, using Clerk J. F. Felder (Claimant) to fill the temporary vacancy.

The instant dispute was handled in accordance with the procedural requirements of the current Agreement between the parties up to and including the highest officer designated for that purpose, discussed extensively in conference

The facts and our position were correctly stated to you in our letter of July 2, 1970 declining this claim.

In support of our statement that Carrier is privileged to determine what work will be performed and what positions will be filled, your attention is invited to Third Division Award 14696 which held:

"* * * the resulting vacancy would have been subject to the provision of Rule 25(b) only if and when the Carrier elected to fill such vacancy. Rule 25 sets forth the procedures for filling temporary vacancies, but cannot be construed as imposing an obligation on the Carrier to fill a vacancy."

In view of these facts there exists no basis for changing the decision given in our letter of July 2, 1970 declining this claim."

OPINION OF BOARD: The Organization bases its Claim on the alleged violation of Rule 25(b) of the Agreement by Carrier, when Carrier refused to permit Claimant to move into the vacant position of Typist-Calculator-Comptometer Operator job #42 on February 16 and 17, 1970. Said position became vacant due to illness of the regular occupant thereof Mr. W. C. Buck on February 16, 17, 18, 19 and 20, 1970. Carrier permitted Claimant to fill the vacancy on February 18, 19, and 20, 1970.

Rule 25(b) of the Agreement, provides as follows:

"(b) Until an Agreement is reached establishing an extra board, all temporary positions and vacancies will be filled by rearrangement of the regular forces in that office, giving senior employees their preference. The senior employee, unassigned on that roster will be called to fill the vacancy left after rearrangement of the regular force."

The Organization's position is that the use of the words "will be" requires that Carrier fill all temporary positions and vacancies and prohibits Carrier from making an election on whether or not to apply the provision of said Rule 25(b) as well as (a) and (c) thereof. The Organization further argues that bulletined positions will be filled temporarily pending an assignment.

Carrier's position is that in the absence of the regularly assigned incumbent, Carrier may blank the position or fill it; that there is nothing in the Agreement which restricts Carrier's right to blank the position; that there is an established practice of blanking positions when the regularly assigned incumbent is absent due to illness; that Rule 57 (predicated upon absent employee's position due to illness not being filled by another employee and the work thereof being performed by other employees in the office) is proof that Carrier may and does blank positions in the absence of the regularly assigned incumbent; that positions are also blanked when the regularly assigned incumbent is absent on vacation.

Carrier relies strongly on Award No. 14696 involving the same parties as herein, support of its position. However, we find that said Award can be distinguished from the facts confronting this Board in this instant dispute. In said Award No. 14696 the Board concluded that the position of Traveling Freight Claim Adjuster was vacant and further the Board was faced with a different rule involving vacations, which did not require Carrier to fill a job

while an employe was on vacation. Thus, we find said Award No. 14696 not controlling in the determination of this dispute.

We find that Carrier violated the specific provisions of Rule 25(b) of of the Agreement, which requires Carrier to have filled the vacant position on February 16 and 17, 1970, and finding such violation, we must sustain 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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.