

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19262
Docket Number CL-19381

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6997)
that:

1. Carrier violated the Clerks' Agreement, in particular the November 14, 1949 Letter of Understanding and Agreement at Houston, Texas, when, on March 23, 1970 and April 6, 7, 13 and 14, 1970, it denied Mrs. Bernice Brown the right to work her regularly assigned position of Expense Bill Clerk (035).

2. Carrier shall now be required to compensate Mrs. Bernice Brown eight (8) hours' pay at straight time rate each aforementioned date.

OPINION OF BOARD: Claimant Bernice Brown is regularly assigned to the position of Expense Bill Clerk, a seven day position with assigned rest days Monday and Tuesday. She is relieved on her regular assigned rest days by relief employee Clerk W. A. Imhoff. On the claim dates, all of which are either Monday or Tuesday, Mr. Imhoff did not work his assignment of Expense Bill Clerk. On March 23, April 6 and 7 he was removed from his assignment to protect vacancy on position of Chief Rate Clerk and on April 13 and 14, he was absent from duty account on vacation. On all the claim dates, the assignment was blanked.

Claim was filed on behalf of Bernice Brown, contending a violation of the Letter of Understanding of November 14, 1949, account she was not called for service on her position for her regularly assigned rest days in the absence of Mr. Imhoff on those dates. The Letter of Understanding reads in pertinent part:

"(1) When, for any reason, a relief employee is not available to work on rest days of six (6) and/or seven (7) day positions the regular employees shall work their respective rest days."

It is the position of the Organization that due to the above quoted Letter of Understanding, Carrier was obligated to fill the position of Expense Bill Clerk on claim dates by utilizing claimant to work the assignment on her rest days.

Carrier counters by stating that in the absence of the regular incumbent, positions may be blanked and doing so is not violative of the November 14, 1949 Letter of Understanding. It contends that the provisions thereof apply only when Carrier elects to fill the temporary vacancy in lieu of blanking it. It is Carrier's prerogative to fill or not to fill the vacancy and no provision of the Agreement makes it mandatory to fill the position.

This Board agrees with the contention of the Carrier. A careful reading of the November 14, 1949 Letter of Understanding leads us to believe that the provisions thereof apply only when Carrier elects to fill the vacancy. Nowhere does it state that Carrier must fill the vacancy, nor does any other Agreement on this property require Carrier to do so. In the absence of clear, unambiguous language prohibiting Carrier from blanking the assignment in question, it is beyond our jurisdiction to require Carrier to do so. Nor can we supply such a contractual proviso when the parties themselves failed to negotiate one. The November 14, 1949 Agreement merely delineates the procedure to be followed when Carrier elects to fill the assignment. It does not require Carrier to fill it.

The case at bar is distinguishable from Award 19029, relied on by the Organization, as that award involved the interpretation of Rule 25 (b) of the Agreement which is unlike the November 14, 1949 Letter of Understanding, which we are interpreting here.

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 Employee involved in this dispute are respectively Carrier and Employee 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:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1972.