

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19459  
Docket Number CL-19334

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(J. F. Nash and R. C. Haldeman, Trustees of the Property of  
( Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6948)  
that:

(a) Carrier violated the agreement between the parties effective May 1, 1955, as revised, when it refused to pay Mary Grover, rate of pay of vacation position she filled in place of E. Wiedl, period December 8th thru 12th, 1969, inclusive, and

(b) Carrier shall now be required to pay Mary Grover, the difference in rate of pay for this period, which was the rate of pay of position held by E. Wiedl.

OPINION OF BOARD: Before going forward with the merits of this Claim, we must dispose of an objection raised by the Carrier that the Claim submitted to this Board is not the same Claim that was handled on the property. We note that Part (a) of the Statement of Claim submitted to this Board reads:

"(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised, when it refused to pay Mary Grover, rate of pay of vacation position she filled in place of E. Wiedl, period December 8th thru 12th, 1969, inclusive; and" (Underscoring added)

This differs slightly from the Claim that was initially filed on behalf of Claimant on December 29, 1969. In that letter the Claim was stated to be:

"Mr. Wiedl was on vacation, December 8th. thru 12th. inclusive: and while he was on vacation, Mrs. Grover was performing duties which are assigned to Mr. Wiedl which is a higher rated position." (Underscoring added)

Throughout subsequent correspondence exchanged on the property the sense of the Claim is that Claimant Grover was only performing some of the duties assigned to vacationing employee Wiedl, and it is uncontested in the Record that:

"The only work performed by Mrs. Grover during Mr. Wiedl's vacation was to operate the Xerox reproducing machine to make copies of reports prepared by employees other than Mr. Wiedl or Mrs. Grover."

Under these circumstances, we must decide if the slight difference in Claim, on the one hand claim for pay at the rate of vacation position filled in the absence of the vacationing employee, or on the other hand claim for pay for performing duties of a higher rated vacationing employee's position, is sufficient to mislead the Carrier as to the issue to be adjudicated and warrant dismissal. At first blush, it would appear that the difference between the Claim that was handled on the property and the Claim presented to this Board is slight and that the Carrier was not misled as to the issue to be decided. If this is the case, we should follow Award 17222, Referee Jones:

"\*\*As has been noted in other cases before this Board, we must avoid being 'super technical' in resolving disputes. We agree with Referee David Dolnick in Award 11214 when he stated the following principle: 'It is not the purpose of the Railway Labor Act or the August 21, 1954 Agreement to dismiss disputes on mere technicalities. It is rather, the intent to resolve them on the merits\*\*\*.'"

Notwithstanding Award 17222 we note that Article 10(a) of the Vacation Agreement provides in part:

"An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is greater\*\*\*."

while Article 10(b) provides in part:

"Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates\*\*\*."

Article 10(a) deals with the filling of an assignment of an employee on vacation; Article 10(b) deals with performing part of the work of a vacationing employee without filling the assignment. In the one situation one method of payment applies; in the other, a different method of payment applies. Therefore, the change while being slight is nonetheless decisive as to method of payment.

Under the circumstances, we feel that the change in the Claim is sufficient to warrant dismissal. See Award 17911.

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;

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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 Claim be dismissed in accordance with Opinion.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killum  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.