

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19628**
Docket Number CL-19548

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station **Employees**
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7009)
that:

(1) Carrier violated the Agreements between the parties when on June 22, 23, 24, 25, 26, 29, 30 and July 1, 1970 it refused to permit Claimant R. M. Peck to **move** up in line with his seniority to fill a higher rated position for which he was qualified in violation of past practice and Agreement rules and instead, utilized a junior **employee** for this vacancy.'

(2) Mr. R. M. Peck now be compensated for **the** difference in the rates of pay of Store Helper Position No. 416, rate \$24.8288 per day and that of Store Clerk Position No. 4, rate \$27.0969 per day, for the eight days vacation vacancy as hereinbefore set forth.

OPINION OF BOARD: During the vacation of a Clerk 4 the Carrier refused to permit the claimant, a Stores Clerk 3, to **move** up in Line with his seniority to fill that higher **rated** position for which he was qualified.

The Organization contends that this refusal is in violation of Rule 22 of the Agreement between the parties governing Status of **Employees** on Short Vacancies and Temporary Positions. That rule reads as **follows:**

"In the filling of temporary positions **or** short vacancies at Locations where one or more employees are already employed, the regular employees may, at the discretion of the supervisor in charge (emphasis added) be given an opportunity to **work** the preferred position, and the extra **employee** the position left after the regular employees are given their choice. When temporary positions or short vacancies terminate, the affected employees **will return** to their former position **or status.**"

This Board has already held in Awards 13178, Referee Dorsey and Award 16981, Referee Ritter and Award 17526, Referee Quinn, that where a rule is strictly a permissive rule, as in the instant **case** "**at the discretion of the supervisor in charge**", then the employees **can** have **no** enforceable right as a result of that rule.

This Board further finds that Article X Section 1, Par: (f) of the Agreement of December 1, 1969 (pages 9-10) provides **specifically** that "Incumbents of extra Board positions will have preferential rights over extra list employees, to short vacancies, temporary assignments . . . and will be notified or called to work on a rotating basis, first in, first out." And furthermore, Paragraph 1(o) of the **same** Article and Section provides: "Organizations and Management will cooperate in the establishment of the extra boards and extra board positions and will give due consideration to the necessity of properly scheduling annual vacations of employees in both crafts to permit Carrier to relieve such employees for vacations with extra board employees."

The Carrier's refusal to permit the claimant to fill a higher rated position was in accordance with the Agreements, including the Agreement of December 1, 1969.

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.

A W A R D

The claim must be denied,

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.