

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20058
Docket Number CL-20050

Irving T. Bergman, Referee

(Brotherhood of Railway, Airline and Steam ship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago & Illinois Midland Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

1. Carrier violated the Agreement on March **4th**, 1972 when it required a junior employe to perform Rest Day Relief work on a 'Short Vacancy' in lieu of senior employe Mr. H. O. Bacon.

2. Because of the violation Carrier shall be required to compensate Mr. H. O. Bacon for eight (**8**) hours time and one-half rate of Relief **Janitor-Laborer** position for March **4th**, 1972.

OPINION OF BOARD: Claimant **is** listed **#12**, occupation janitor-laborer at the Shops Store Department, assigned Monday through Friday with rest days on Saturday and Sunday. L. W. Matthews who is listed **#15**, occupation relief laborer-janitor at the Shops Stores Department performed the janitor's work on Saturday and Sunday. W. A. Sheppard is listed **#17**, (no occupation), Shop Stores Department, C & **IM** Exhibit D, Seniority Roster No. 3, dated 7-12-72. Laborers and janitors are included in group (3) of SCOPE Article I, Rule 1, and by omission from other provisions of the Article which specifically exempt certain classes from the application of seniority, laborers and janitors are covered by the seniority Rule.

Article III, Seniority, Rule 3, (a) states that seniority begins when, "the **employee's** pay starts on the seniority district and in the class to which assigned."; (e) states that, "seniority rights of **employees** to vacancies--or to perform work covered by this agreement will be governed by these rules." Rules 4 through 7, 9 and 10 refer to Re-Entering Service, Rosters, Posting of Rosters, Exercise of Seniority, Bulletins and Temporary Assignments, which are not material to the **issue** of this case. Rule 11 is headed Short Vacancies, defined as less than 30 calendar days duration which, "may be filled without bulletining." It states further that: "**Employees** will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 8 and fourth paragraph of Rule 19. Rule 8, headed Promotion Basis states that seniority will prevail if fitness and ability are sufficient, management to be the judge of fitness and ability. Paragraph fourth of Rule 19 provides for the recall of furloughed **employees** to be given preference, "on a seniority basis to all extra work, short vacancies---." It al.90 states: "When a bulletined new position or vacancy is not filled by an employe in service **senior** to a furloughed employe **n** that roster---, the senior furloughed employe will be called to fill the position."

Petitioner. has, in effect, relied upon the Rules of the Agreement to support the claim. Carrier has argued that it had the right to blank the position which was vacant due to the relief **employee's** illness on Saturday and Sunday; that the rules do not require that seniority be applied and that in any event claimant was not senior on the roster.

We do not disagree with the prior Awards submitted by the Carrier **which** have held that a vacancy may be blanked, and we agree with the Awards which hold that assertions by a party are not evidence or proof. In regard to the latter, it may be noted from the record that the Carrier has asserted that vacancies such as in this case had been filled by an equitable **distribution** of the work among the shop stores' available **employees**. No examples of this asserted practice, however, appear in the record as evidence. The Carrier has also brought to our attention Awards which denied claims made by **employees** who were not entitled to make the claim. In this case, no **employee** senior to the claimant has asked for the work and the claimant is on the applicable roster assigned to the type of work which was performed. Award 19820 submitted by the Carrier does not involve work to be performed on rest days.

Rule **11** of the Agreement is applicable, it refers to Rule **8** and Rule **19** to **determine** how short vacancies should be filled. Rule 8 applies **seniority**. The fourth paragraph of Rule **19** includes short vacancies and provides that **seniority will** be respected. The Carrier did not chose to blank the position. **furloughed employees** are involved. Claimant should have been called. Rule 45, provides that: "**Employees** notified or called to perform work ---shall be allowed a minimum of ---, and if held on duty in excess of two hours, **time** and one-half will be allowed----."

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A W Pender
Executive Secretary

Dated at Chicago, **Illinois**, this 14th day of December 1973.