

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20067**
Docket Number CL-20176

Frederick R. **Blackwell**, Referee

(Brotherhood of **Railway**, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Western Pacific **Railroad** Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7268)
that:

1. The Western Pacific Railroad company violated the current Clerks' Agreement when it used the incumbent of an excepted position to fill a vacancy on an Agreement covered position October 4 through October 21, 1971; and,

2. The Western Pacific **Railroad** Company shall now be required to compensate Mr. R. L. Mims for an **additional eight** (8) hours at pro-rata **rate** of Diversion and Special Handling **Clerk each** date October 4, 5 and 6, 1971; and,

3. The Western Pacific Railroad Company shall now be required to compensate Mr. G. **Wigley** for an additional **eight** (8) hours at pro-rata of Diversion and Special Handling Clerk **each** date October 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 1971.

OPINION OF BOARD: This dispute **arose when** the Carrier permitted the incumbent of an excepted position to work a vacation vacancy on the position of Diversion and **Special Handling** Clerk, which is covered by all of the Agreement rules. The **Employees allege** that this was an **Agreement-violation**.

During October 4-21, 1971, **there was** a vacation vacancy on the position of Diversion and **Special Handling** Clerk, which is a bid position under the Agreement. Under date of **October 1**, 1971, Mrs. Elsie **Gonsalves**, the incumbent of a Rule 2 (b) excepted position, wrote the following Letter:

"Because of my seniority and the higher rate of pay, I request to relieve Miss Ann **Malfa**, Diversion Clerk, while she is on vacation."

Mrs. Gonsalves worked the **three-week vacation** vacancy, resulting in claims being filed on behalf of two **junior employees** who held bid positions under the Agreement. In support of the claims the Employees' Submission argues that: (1) the duties of employees **working in excepted** positions are subject to restrictions provided by the **rule authorizing the excepted positions** (Rule 2 (b)) and, in consequence, it is **not permissible** to assign work to an excepted employee which falls outside **these restrictions**; (2) the situation here in effect transferred work from a **bid position** to an excepted position, which is not permitted by the **Agreement**; and (3) the vacation vacancy of an Agreement-covered position such as the Diversion Clerk position must be filled by employees covered by all Agreement **rules**.

The Carrier advances a contrary view on each of the foregoing arguments, asserting that the vacancy was filled as vacation vacancies have been filled on this property since the inception of the National Vacation Agreement, namely:

- (1) by the use of furloughed **employees**;
- (2) by offering the vacancy to assigned employees in seniority order to be filled for the entire absence of the vacationing **employee**.

The Carrier contends that under (2) of the above quotation, which applied in the instant facts, Mrs. Gonsalves was the senior qualified employee making application for the position of Diversion Clerk. She was not required by Carrier to occupy the position, but voluntarily exercised seniority to work the position for three weeks.

On the basis of the foregoing, and the whole record, we conclude that Carrier's contentions are sound and we shall therefore deny the claim. The dispute here involves a simple incident of prevailing seniority, and it is not **relevant** that Mrs. Gonsalves bid for the vacation vacancy while occupying an **excepted** position. With respect to the Employees' arguments set out in (1) and (2) above, we think the record makes it clear that Mrs. Gonsalves moved from her regular excepted position while working the vacation vacancy of a bid position and she therefore was not an excepted employee during the vacation vacancy. Further, since there is no record evidence that Mrs. Gonsalves concurrently performed the duties of her excepted position and the duties of the vacation vacancy, there is no basis for finding a transfer of work from a bulletined position to an excepted position. The Employees' point (3) is put in proper perspective by Carrier's statement that it is the position-not the employee- that is excepted from certain Agreement rules by Rule 2 (b) and, thus, the restrictions of an excepted position do not affect the seniority rights of an employee occupying that position. These rights remain the same in respect to bidding on an Agreement-covered position. on the basis of seniority, as the rights of an employee who occupies an Agreement-covered bid position.

For the foregoing reasons we shall deny 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 **Employees** involved in this dispute are respectively Carrier and Employees within the meaning of the **Railway Labor Act**, as approved June 21, 1934;

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That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A W Pauls*
Executive Secretary

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