

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20575  
Docket Number CL-20437

David P. **Twomey**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station **Employees**  
(Chicago, Milwaukee, St. Paul and Pacific Railroad  
( **Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(CL-7371) that:

- 1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin when it required employe L. **Bintz** to work Road Caller Position No. 09590 under protest.
- 2) Carrier shall **compensate** employe L. **Bintz** at the penalty rate of Position No. 09470 for May 16, 17, 18, 19, 20 and 23, 1972.

OPINION OF BOARD: The Claimant became the regular assigned occupant of Road Caller Position **09590** as of May 8, 1972. Prior to May 8, 1972 the Claimant had requested to work a temporary vacancy occurring on Position 09470 -- Assistant Chief Clerk. The request **was** granted and he **was** assigned to work Position 04470 effective May 8, 1972: he **was** awarded the temporary **vacancy** on Position 09470 by bulletin on May 15, 1972. On May 16, 1972 the Carrier removed the Claimant from Position **09470** and required him to work the Road Caller Position **09590** on the dates of the claim. The Claimant worked Position **09590** under protest.

The Carrier contends that the claim presented to its Vice President-Labor Relations **was** not the same claim filed with the Assistant Superintendent and appealed to and denied by its Superintendent and is thus barred under Rule 36 of the Agreement. The Carrier's perception in this regard is a technical one which **we** must reject. The Carrier's position **was** not prejudiced in any **way** in the processing of this claim. The Claimant's time slips, which **are** the basis of this claim, state: "**CLAIM PENALTY TIME -- WORKING POS. 09590 UNDER PROTEST -- FORCED OFF POS. 09470 BY THE CARRIER**". The claim presented to the Vice Resident-Labor Relations and now before this **Board** is based on the Carrier's requiring the Claimant to work Road Caller **Pos. No. 09590**, under protest; and the Claimant seeks redress for the alleged Agreement violation at the penalty rate for the position he **was** removed from for the dates in question.

Concerning the merits of the case, the pertinent rules involved in this dispute are quoted below:

"RULE 9 - **BULLETINED POSITIONS**

(f) Bulletined positions filled temporarily pending an assignment, shall be filled by the senior qualified employe requesting the position.

(g) New positions or vacancies of thirty (30) days or less duration shall be considered as temporary and may be filled by an employe without bulletining; if filled, the senior qualified employe requesting same will be assigned thereto.

(h) When an employe is assigned to a temporary vacancy the position formerly held will be considered a temporary vacancy. If, prior to the expiration of the temporary vacancy, the employe is disqualified or desires to give up such vacancy, or when the temporary vacancy expires, he will return to his former position provided senior employe has not exercised displacement rights thereon, or **exercise** seniority rights to any positions bulletined during the period he occupied the temporary vacancy. All **employees** affected by his return will do **likewise**."

"MEMORANDUM OF AGREEMENT

\* \* \* \* \*

2. In the application of the first paragraph of Rule 9(h) when a regularly assigned employe is assigned in accordance with Paragraph 1 above; such employe, unless disqualified, must remain on that position for the duration of the vacancy or until the position is **bulletined** and assigned either **as** a temporary **or** permanent vacancy at which time he will return to his former position, provided **senior** employe has not exercised displacement rights thereon, or exercise seniority rights to any position occupied by **a** junior employe bulletined during the period he occupied the temporary vacancy, except when an employe is assigned to the temporary vacancy, and works that position for any five (5) consecutive work **days** and is therefore entitled to

"the rest days of that position, he will be required to take those rest days before returning to his former position or exercising seniority. All **employees** affected by his return will do likewise.

This agreement will be identified as 'Memorandum of Agreement No. 71 and is effective March 1, 1971.'

Memorandum No. 71, paragraph 2 clearly requires that (unless disqualified) **when** an employee is assigned to a temporary **vacancy**, then he must be **allowed** to remain on that **vacancy** for the duration of the vacancy. The purpose of Rule 9(f)(g) and (h) is to allow the senior qualified employee the valuable right to select higher rated positions on a temporary basis. The Claimant in this case **was** not disqualified and should have been allowed to remain on the position which was assigned to him by bulletin.

The Carrier's contention, structured on rights inherent in Rule 17 of the Agreement, that no qualified employee was available to relieve the Claimant at his regular assignment is **contrary** to the record established on the property.

We find that the Agreement has been violated and we thus will sustain the claim. Since the Carrier has compensated the Claimant at the straight time rate of Position 09590, based on its view of the claim, **we** shall subtract such payment from the amount due Claimant under this award.

**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,

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Claim sustained as per opinion.

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

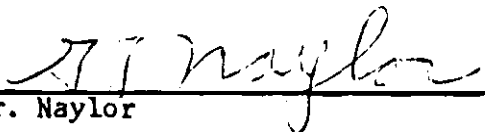
ATTEST: *A. W. Paulson*  
Executive Secretary

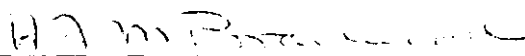
Dated at Chicago, Illinois, this 30th day of December 1974.


CARRIER MEMBERS' DISSENT TO AWARD 20575, DOCKET CL-20437


(Referee Twomey)


We dissent. The matters of record which clearly establish this claim is invalid are discussed in the memorandum submitted by the Carrier Members. That memorandum is retained in the Master File and by reference is incorporated in this dissent.

  
Mr. Naylor

  
Mr. Braidwood

  
Mr. Carter

  
Mr. Euker

  
Mr. Youhn