

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20595  
Docket **Number** CL-20462

Frederick R. Blackwell, Referee

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

**PARTIES TO DISPUTE:** (

(Maine Central Railroad Company  
( Portland Terminal Company

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood  
(GL-7413) that:

1. Carrier violated Rules 3(b), and 16(e) among others of the current Clerks Agreement as amended, **when** it assigned a school teacher, a bona-fide employee to perform unassigned clerical rest day **work on** its first trick **checkers** position at **Waterville**, Maine.

2. Carrier shall be required to compensate the regular **employee**, Mr. Arthur E. Ladd, three (3) days pay at punitive rates for said violations covering Saturday, July 22, 1972, Sunday, July 23, 1972 and Saturday, August 12, 1972.

**OPINION OF BOARD:** For the five years preceding this **claim**, Mr. **Roger St. Amand**, who worked as a teacher during the regular school **year**, was employed by Carrier to perform vacation relief during the s-r at Waterville, Maine. In the s-r of 1972, he was rehired to cover a **clerical** vacation vacancy from **June** 19 through **June** 30, 1972. After working the vacation relief, he worked a one-day vacancy on July 6, 1972 **on** the Bill Rack Clerk's Position and was then used to work the First hick **Checker Position** at **Waterville** **on** three separate rest days of that position (July 22, 23, and **August** 12, 1972). The regular Checker Clerk claims punitive pay for the rest day work performed by Mr. St. **Amand** on the theory that Mr. St. **Amand** was not a bona-fide employee when the disputed work was performed. The issue thus drawn is whether Mr. St. **Amand** was an outsider or a bona-fide **employee** of the Carrier when he performed the tag-end rest day work **on** the claim dates of July 22, 23, and August 12, 1972.

A great **number** of prior Awards support the Employees' position that, although a new employee can be hired to perform vacation relief work, he cannot perform tag-end **rest day work** until he has acquired seniority by **completing** 60 days of vacation relief work. Award Nos. 5558, 5620, 15802, 16560, et al. **The** Carrier expresses awareness of these awards but argues that -

"... These same Awards hold that a person hired to cover temporary vacancy or a vacation vacancy before **being** used to cover tag-end rest day work established a legitimate employment relationship **and** such person may thereafter be used to cover tag-end rest day work...." (Emphasis added)

The Carrier's view of the prior Awards appears to be that it is irrelevant whether a **person** works a "temporary vacancy" or a "vacation vacancy" because, **in** either case, such person can thereafter perform tag-end rest day work. We agree in part and disagree in part. We think the prior Awards make it clear that a person who covers a "vacation vacancy" (i.e., who perform vacation relief work), but who does not complete 60 days of such work, does not acquire a status from such work which permits him to be thereafter **used** to perform tag-end rest day work. On the other hand, the prior Awards appear to impose no restriction on the performance of tag-end rest day work by a person who previously performed work on a "temporary vacancy" **and** who established seniority by **reason** of working such "temporary vacancy". In **the facts** of the instant dispute, Mr. St. **Amand** was not rendered a bona-fide employee who could perform tag-end rest day work by reason of his working vacation relief from June 19 through June 30, 1972, the reason being that he acquired no seniority from this work. However, there is no dispute that Mr. St. **Amand** covered a one-day vacancy on July 6, 1972 on the Bill Sack's **Position**; as a result of this work, he established seniority on July 6, 1972 and thus he had an established seniority date when he performed the tag-end rest day work on July 22, 23, and **August** 12, 1972. We are aware that he had worked as a school teacher during the regular school term for several **years** preceding this dispute. Prior **Awards** indicate, **however**, that such outside employment is not necessarily a controlling factor and we conclude in the instant facts that the decisive fact is **that** Mr. St. **Amand** held a **seniority** date under the provisions of the applicable agreement when he performed the tag-end rest day work. We shall therefore **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 **Employee** involved in this dispute are respectively Carrier and **Employee** 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

Award Number 20595  
Docket **Number** CL-20462

Page 3

That the **Agreement** was not violated.

A W A R D

Claim denied.

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

ATTEST:

  
Executive Secretary

Dated at Chicago, **Illinois**, this **31st** day of January 1975.