

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award **Number** 22275  
Docket **Number** CL-22165

**Nathan Lipson, Referee**

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

**PARTIES TO DISPUTE:** (  
(Southern **Pacific** Transportation Company  
( (Pacific Lines)

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood  
(GL-8392) that:

(a) *The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed and refused to accept application made by Miss F.L. Fambrini under the terms of Rule 34 (c) thereof to fill Assistant Dead Timekeeper Position No. 109; and,*

(b) *The Southern Pacific Transportation Company shall now be required to allow Miss F. L. Fambrini eight (8) hours' additional compensation at Assistant Head Timekeeper's rate of pay each date April 17, 18, 19, 22, 23, 24, 25, 26 and 29, 1968.*

**OPINION OF BOARD:** In the course of arguing this case at the property and appealing same, the **Organization took** the position that the Carrier's responses to the appeal of the claim did not meet the **requirements of Article V of the contract**, and also that the Carrier's handling of the issue in its **initial** submission constituted a waiver of any defense to the **claim**. There is no need to detail the **weaknesses in the Organization's procedural arguments, since such arguments were not pressed in the appeal to this Board**. Accordingly, **no** procedural issues will be considered herein, but the **matter** will, instead, be decided **on** the merits.

The instant **claim** arises from the absence from duty due to illness of Miss **M. V. Keatts** from April 16 through April 29, 1968. Miss Keatts was the incumbent of Position **No. 109, Assistant Head Timekeeper, in the Timekeeping Section of the Payroll and Miscellaneous Services Department, located at the Carrier's General Offices at San Francisco, California; said Department performs various timekeeping and payroll functions for the Carrier, which had been previously handled in several regional or district offices. At the time of the claim, the Timekeeping Section consisted of 2 Head Timekeepers, 6 Assistant Head Timekeepers, and 74 Timekeepers.**

In April, 1968, the **highest** rated of the **above** positions received \$29.5349 per day, the second **position** carried a daily rate of \$28.4263, **and the lowest position paid \$27.3608 daily. Timekeepers have payroll audit duties; Assistant Head Timekeepers' duties include instruction to and assistance to Timekeepers, the handling of claims, the requirement to keep current on agreements for guidance of Timekeepers, and, finally, the assumption of Timekeepers' duties, when absences in said classification occur. Head Timekeepers are in charge of all operations in the Timekeeping Section, and, consequently, perform a minimal amount of direct supervision or assistance to Timekeepers.**

In any event, the **Carrier, while** conceding that the various **Timekeeper** classification positions were **bulletin** jobs, denied that there was an **obligation** to fill the Assistant Head Timekeeper position during the dates at issue. Instead, the Carrier took the position that a fair reading of Rule 34(c) allows the **employer** to **blank** out a position in the absence of the **regular incumbent**, and to distribute the involved work to others. **Rule 34**, which bears the title "Short Vacancies", reads as follows:

"(a) New positions and/or **vacancies** of **thirty (30)** calendar days or less duration, **may** be **filled** without being advertised, at the option of the employing officer. **New** positions and/or vacancies of **doubtful** duration, need not be advertised **until** the expiration of thirty (30) calendar days, in connection **with** which, so far as practicable, the approximate duration of the work will be given.

NOTE: Subject to (b) and (c) of this rule.

(b) **New** positions or vacancies of **thirty (30)** calendar days or less duration, shall be filled, whenever possible, by the senior qualified unassigned **employee** who is available and who has not **performed** eight (8) hours work on a calendar day; an **unassigned** employee will not be considered as being available to perform further work on vacancies after having performed five (5) days or forty **(40)** hours of work at the straight **time** rate in a work week beginning with Monday, except when such unassigned **employee** secures an assigned position under the provisions

"of Rule 33 or returns ~~to the~~ extra list from a position to which he ~~was~~ assigned, in which event he shall be compensated as **provided** for in Rule **20**, Sections (b) and (c).

**NOTE:** 1. An **unassigned** employee placed on a vacancy or a new position having rest days of Saturday and Sunday will **remain** thereon until relieved by regular **employee** or displaced by a senior unassigned **employee**.

**NOTE:** 2. An **unassigned employee** placed on a vacancy or new position having rest days other than **Saturday** and **Sunday shall, after having performed five (5) days or forty (40) hours** of straight **time** work in a work **week beginning with Monday**, be released from the position only if by **remaining** thereon he **would** work in excess of **five (5) days at straight time rate** in his work week. An employee so released **shall** be privileged to return to the vacancy **from** which released at the beginning of the new work week if the vacancy is then filled by a junior unassigned **employee**, or he **may** displace any junior unassigned employee, or place himself available for subsequent vacancies. **If no regular employee is** available and an unassigned **employee** is used after having performed five (5) days or forty **(40) hours** of straight **time** work on vacancies in his **work week beginning** with Monday, he shall be compensated **therefor** at the overtime rate.

(c) *If* a qualified **unassigned employee** is not **available**, position will **be** filled by the senior **assigned** employee who **makes** written application **therefor and** is qualified for such vacancy, and when **assigned** shall take all of the conditions of the position;

"if a qualified **unassigned employe** thereafter **becomes** available he **may** not displace the **regular employe filling the temporary vacancy unless** he is senior to **such regular employe**."

**NOTE: 1.** A **vacancy under** paragraph (c) of this rule **will** not be **considered** a **wcancy available** to an assigned **employe unless** it is known that the **vacancy will exist** for more than two **(2)** days.

**NOTE: 2.** In the event a vacancy of **known** duration of more than two (2) days is **filled** by a regular assigned **employe** and a **senior** qualified regular assigned **employe** desires to displace the junior regular assigned **employe working** the position, he **may**, upon giving at least four **(4)** hours' notice, do so **providing** such displacement notice is **made** within fifty-six (56) **hours from the starting time of the position after vacancy is first filled** and the **employe making** the displacement shall **be required to fill the vacancy** at the **beginning** of the next tour of duty on the vacancy.

**NOTE: 3.** Under the provisions of this section a regular assigned **employe** shall not be permitted to work a **temporary vacancy**, or return **from** a temporary **vacancy** to his regular assigned position, or work **another temporary vacancy** on the same **calendar day**."

While the **Organization** does not contest the Carrier's right to **fill**, or decline to fill a vacancy, the argument is made that the Carrier **must** choose **between** the two alternatives. Thus, if the evidence **demonstrated** that the work of the **Assistant Head Timekeeper** was not **performed** during the nine April work days identified in the claim, the

Petitioner would have nothing to argue about. However, the evidence in the record, argues the Organization, does not substantiate the Carrier position that the work was not done, but indicates the converse, i.e., the normal functions of the Timekeeping Section were performed during the absence of the incumbent, so that the incumbent's work was surely done.

The Board would observe that the Organization's reasoning in this matter is fully supported by the Carrier's admissions. The Carrier argued that in establishing the Timekeeping Section work force, "consideration was given to just how many positions would be needed to handle all the required work in a manner that no outside help would be needed to fill position 6 made vacant as a result of illnesses," etc. Thus the Carrier clearly concedes that the work of the Timekeeping Section went on as usual, because the duties of the absent Assistant Head Timekeeper were absorbed by other employees. It is also clear that there is no question that the Claimant duly asserted a written request to fill position No. 109 during the temporary absence of the incumbent, and demanded her rights under Rule 34(c).

There are numerous Awards of this Division which hold that temporary vacancies must either be blanked or filled, and that if the duties of the position are performed, the position is not blanked. Award 7034 (Carter); Award 7255 (Wyckoff); Award 14841 (Wolf); and Award 15459 (Kenan). The latter two Awards are between the parties involved in the instant case.

The applicability of the above Award 6 to the present case must be obvious: The Assistant Head Timekeeper has certain identifiable duties, which are distinct from Timekeeper duties, and which are required for the operation of the Timekeeping Section. If the Section functioned in the absence of an Assistant, it must perforce follow that somebody assumed the Assistant's distinctive duties. If such were assumed, the position was not blanked.

Rule 34 as set forth above must be deemed to constitute a mandatory procedure for the filling of short vacancies which exist. Management may, of course, decide whether or not a vacancy exists. But, in order to sustain the position that a given vacancy does not exist, the work involved must not be performed. Given the circumstances in this case, it must be concluded that the Carrier violated Rule 34(c) in not awarding an existing vacancy to the Claimant on the workdays falling from April 17 through April 29, 1968, inclusive. The Claimant must be made whole by receiving the difference in pay claimed for such days.

**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 **Employes** involved in this dispute **are** respectively Carrier and **Employes** 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. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this **12th** day of January 1979.

