

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22280
Docket Number CL-21978

David P. Twomey, 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-8309), that:

(a) The Southern Pacific Transportation Company violated Rule 34(c) Note 1. thereof, of the Clerk's Agreement, when it filled a two day vacancy on Relief Position No. 1 by assigning a regularly assigned employee thereto contrary to its explicit prohibitive term; and

(b) The Southern Pacific Transportation Company shall now be required to allow employee Adrian R. Rock eight (8) hours additional compensation at the time and one-half rate Position 200 July 30, 1972, and eight (8) hours additional compensation at the time and one-half rate of Position No. 206 July 31, 1972.

OPINION OF BOARD: The Claimant, Mr. Adrian Rock, was regularly assigned to Relief Position No. 1., which position was scheduled to relieve as follows:

July 27-Thurs.	#221, Train Clerk	7:00 A.M.-3:00 P.M.
" 28-Fri.	#221, Train Clerk	7:00 A.M.-3:00 P.M.
" 29-Sat.	#200, Chief Yard Clerk	7:00 A.M.-3:00 P.M.
" 30-Sun.	#200, Chief Yard Clerk	7:00 A.M.-3:00 P.M.
" 31-Mon.	#206, Train Clerks	7:00 A.M.-3:00 P.M.

For the period July 27 through July 31, 1972, however, the Claimant was providing vacation relief for Position No. 204 with assigned hours 7:00 A.M. to 3:00 P.M., under provisions of Rule 34(c). In the absence of a qualified Guaranteed Extra Board employee, the Claimant's Relief Position No. 1 was filled on an overtime basis by the regular incumbent of Position No. 221 on July 27 and 28, and the regular incumbent of Position No. 200 on July 29. On July 30 and 31, 1972, the Carrier permitted a regularly assigned employee to claim, and work, the remaining two days of the original five-day vacancy under the provisions of Rule 34(c). The Organization contends that this violated Note 1 of Rule 34(c). The Carrier disagrees.

The pertinent Agreement language is as **follows**:

Rule 4

(c) If a qualified Guaranteed Extra Board **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** Guaranteed Extra Board **employee** thereafter **becomes** available he **may** not displace the regular **employee** filling the temporary vacancy unless he is senior to such regular **employee**.

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

At the **time the vacancy** first arose, the vacancy on Relief Position No. 1 was known vacancy of five days. The vacancy was not **filled** on **July 27, July 28 or July 29** to the extent that no regularly assigned **employee made** proper application for the position under Rule 34(c), taking over and assuming all of the conditions of the position. As pointed out above the regular incumbents of Positions 221 and 200 filled **the Relief** Position on July 27, 28 and 29. **The** Carrier contends that July 30 and 31 were the last two days of a continuing vacancy of more than two days, and, that no language in the **rule permits** any one continuing vacancy to be broken into artificial segments. We find that the language of Note 1 is clear and unambiguous in specifying that a vacancy under paragraph (c) will not be considered a vacancy **available to** an assigned **employee** "unless it is known that the vacancy **will** exist for more than two (2) days." Clearly it was known when the Carrier accepted the written application under Rule 34(c) for July 30 and **31** that the vacancy would not exist for more than two days. We find that the Carrier's contention is contrary to the clear language.

We find Awards cited **by** the Carrier **inapposite** to the clear Agreement language of the instant case. We shall sustain the claim as **originally** presented at the pro rata rate of pay. There is no Agreement support for interest and any such request is denied.

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 as per Opinion.

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**.