

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22407
Docket Number m-22173

Robert A. Franden, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Illinois Terminal **Railroad** Company

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood that:

(1) The Carrier violated the **Agreement** when it assigned and used Larry **Pruden** instead of Gary **Hammond** to fill a vacation vacancy of track foreman on thd Northern District for the period June 7, 1976 through June 11, 1976, both dates inclusive (System File ITRR 1976-25).

(2) Mr. Gary **Hammond** be allowed the difference between what he would have received at the track foreman's rate and what he was paid as the occupant of a lower rated position during the period referred to in **Part (1)** hereof."

OPINION OF BOARD: The Foreman of **District Gang** No. 11 **observed** his vacation from **June 7, 1976** to **June 11, 1976**. During that **time** the Carrier appointed **Large Machine Operator Pruden** to work the **foreman** position. **Pruden** held system wide seniority as a **Large Machine Operator** but held no track **laborer** seniority in the **Northern** District where **District Gang** No. 11 is located.

The **filling** of the foreman's position during his absence **while** on vacation falls within the purview of **Article 12(b)** of the National Vacation Agreement. Under that **provision** the absence **from** duty is not considered a vacancy **but every effort** to observe seniority **must** be **made** if the **Carrier** elects to fill the position. The real issue here is whether **Large Machine. Operator Pruden** had seniority such as would permit the Carrier to use **him** to fill the **foreman** position consistent **with** the agreement provision that the Carrier **make every effort to observe** seniority. The introduction of the promotion rule (No. 7) into the dispute in the submissions is inappropriate in that neither a vacancy nor a new position is involved here.

The applicable rules in the instant matter are **Rule 4(f)** and Article 12(b) of the National **Vacation Agreement**:

"RULE 4 - Seniority

* * * *

(f) Rights accruing to **employees** under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railroad as hereafter provided."

"Article 12

* * * *

(b) **As employees** exercising their vacation privileges will be **compensated** under this agreement during **their** absence on vacation, retaining their other rights as if they **had** remained at work, such absences from duty will not constitute 'vacancies' **in** their positions under any agreement. **When** the position of a vacationing **employee** is to be **filled** and regular relief **employee** is not utilized, **effort** will be made to observe the principle of seniority."

When the Carrier moved to fill the vacation absence it was obligated to do so in accordance with the contractual arrangements between the parties. Under the Agreement the Carrier is required to fill the position on a seniority basis. **Mr. Pruden** did not hold track subdepartment seniority on the Northern District when he was used to fill a foreman's position in the Northern District. The fact that he was working with the gang on the Northern District by virtue of his system wide seniority as a Large Machine Operator did not vest him with track subdepartment seniority in the Northern District. The Agreement is clear that seniority is restricted to subdepartments and districts under **Rule 5**. The Carrier was obligated to use every effort to observe the seniority roster in the track subdepartment for the Northern District when it filled the position occasioned by the vacation absence. This it did not do and **therefor** violated the **Agreement**.

We find no fatal defect in the handling on the property as alleged by the Carrier.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1979.