

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22573
Docket Number CL-22255

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (**Brotherhood** of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(The Lake Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the **Brotherhood**
(GL-8456) that:

1. The Carrier Violated the effective Clerks' Agreement when it failed to bulletin **and** award Job **No. 212**, Relief Crew **Caller**, when it was vacated by the **regularly** assigned incumbent and was **known** to be vacant in excess of thirty (30) days.

2. The Carrier **shall now** be required to compensate Clerk Paul **Vargo** for eight (8) hours' pay at the pro rata rate of Job **No. 212**, Relief Crew **Caller**, which is in addition to any other earnings paid by the Carrier, **commencing** with July 5, **1976** and for each and every day thereafter that a like violation occurs.

OPINION OF BOARD: There exists on this property a **Memorandum** of **Understanding** dated December **21, 1962** which reads as follows:

"It was **mutually** agreed to **fill** the vacancies of **vacationing** employees as follows:

"1. Advertise vacation relief **assignment** for Crew Callers and Chief Crew Caller, who are vacationing throughout the year. Example: **Employee who** has been awarded the Vacation relief assignment will cover each Vacation assignment, and after finishing **same**, **will return** to his regular position. In the event **no** bids are received when the relief **assignment** is advertised and there are no qualified extra or furloughed employees available, the junior qualified regularly assigned employee not holding a Crew **Caller** assignment can be assigned to the vacation vacancy.

"2. The filling of vacationing Yard employees assignments will revert to the system applied prior to the year 1962. The Yard **employees** vacation assignment will be advertised at least **48** hours prior to the vacationing period, etc.

"**This** understanding to become effective January 1, 1963."

In compliance with the provisions of paragraph numbered one of this Memorandum of Understanding, Carrier posted a bulletin notice for a vacation relief assignment for Crew **Caller** vacation periods as **follows**:

July 5 through August 8, 1976 - Job No. 212

August 9 through August 22, 1976 - Job No. 211

September 20 through October 3, 1976 - Job No. 211

December 20 through December 26, 1976 - Job No. 211

This vacation relief **assignment** was awarded to Crew **Caller** E. Price.

The crux of this dispute concerns Carrier's **refusal** to bulletin the Crew **Caller** position (Job No. 212) which was held by Mr. Price.

Petitioner argues that when **Price** bid for and was assigned to the vacation relief assignment described above, his position (Job No. 212) became a vacancy which required bulletining in **accordance with** the provisions of Rule 25 - Advertising Positions.

Carrier contends that, by its **very** language, the December 21, 1962 Memorandum of Understanding recognizes that the **employee who** makes **application** for such Crew **Caller** **vacation** relief assignment retains **ownership** of his regular position as evidenced by the language which says:

"* * * **Employee** who has been awarded the **vacation** relief assignment will cover each vacation assignment, and after finishing same, will return to his regular position. * * *."

Carrier further contends, without contradiction, that this procedure has been followed since the Memorandum of Understanding became effective in 1963.

We are convinced from this record that Carrier's application of the provisions of **the** December **21**, 1962 Memorandum of Understanding is correct. Therefore, we must deny the claim as **presented**.

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 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 **30th** day of October **1979**.