

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22921**
Docket Number **CL-22998**

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (668814)
that:

1. Carrier violated the effective Clerks' Agreement when on certain dates **specified** below, it failed to properly fill **positions** of vacationing **employees;**

2. Carrier **shall** now compensate Ms. Eileen **M.** Walker for **forty-eight** (48) hours' pay at the pro-rata rate of **an Assistant** Machine Operator Position for the **period** from October 10 through October 21, 1977;

3. The Carrier shall now compensate Ms. Carol L. Bennett and Mr. William S. **Zanolli for four** (4) hours' **pay each** at **the** pro-rata rate of an Assistant Machine Operator Position for November 18, 1977.

OPINION OF BOARD: **The claims in** this dispute involve absences of regular **employees** on account of vacations or illness. It **is** the Organization's position that Carrier failed to observe correctly the relevant provisions of the National Vacation Agreement, particularly Articles 6 and 10 paragraph (b), and Agreement Rules 4 (day's work and **overtime**) and 7 (absorbing **time**) **when it assigned a keypunch operator to perform the work of an assistant machine operator who was on vacation from October 10 through 21, 1977 and an assistant machine operator to perform the work of a machine operator who was absent on November-18, 1977.** It contends that in both cases the position **of the absent employee should have been filled by Claimants Walker, Bennett and Zanolli in accordance with the aforementioned Rules.**

Carrier, **contrawise,** contests this interpretative position and asserts **that these** Rules are inapplicable to these **situations,** since the positions were filled by moving up **employees working on the same shift** pursuant to the **Memorandum of Agreement, Case 1025, past practice** and compensated according to Agreement Rule 16 (**Preservation of Pates**).

Moreover, it contends that the Organization's ex parte submission contained numerous exhibits and assertions such as: the Data Processing Equipment Assignment Sheets, the statements of Machine operator Zanolli and Assistant Machine operator Mikoloski, the correlative statement made on p. 8 that an undue burden was placed on them in direct violation of Circular No. 1's requirements.

In reviewing this case, we concur with Carrier that the above stated inclusions were not handled or discussed on the property in *contravention* of Circular 1 and thus we cannot consider them in our deliberations. We do find, however, after carefully examining the Organization's submission and supportive evidence that it failed to demonstrate persuasively that Rules 4 and 7 and the pertinent articles of the National Vacation Agreement were consistently applied in this fashion on the property. Rule 4 does not require that vacancies **must** be filled for part or all of a shift, when the work can be handled under existing rules, agreements or practice and the Memorandum of Agreement Case 1025 permits an employe from the same shift to handle the duties of an absent employe through move up procedures. We do not find Rule 7 applicable **herein**, since the Claimants were not required to suspend work and it is not a violation of the absorbing agreement per se to assign a regularly assigned employe to fill the vacancy of the regularly assigned vacationing employe. (See Third Division Award 21660). In the instant case, the Key Punch Operator and the Assistant Machine Operator were paid the higher rate consistent with Agreement Rule 16.

Upon the record then, we do not find that the **instant** claims were supported by the evidence and we **must accordingly** deny them.

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.

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Claim denied.

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

ATTEST: *AW. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this **22nd** day of July 1980.