

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23437
Docket Number CL-2355

Martin F. **Scheinman**, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employee
{ Bessemer and Lake Erie Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8928) that:

1. Carrier violated the effective Clerks' **Agreement** when it failed to consult with the Local **Chairman** in the **assignment** of a Two Star Position;

2. Carrier shall now **compensate Ms. Linda K. Redfoot** for the difference in the rate of pay between what she was paid and what she would have earned on the position of Chief Clerk to Engineer Track for September 5, 6, 7 and 8, 1978.

OPINION OF BOARD: The Organization claims that **Carrier violated** the Agreement when it failed to consult with the **Local Chairman** in the assignment of a **Two Star Position**, specifically, the position of Chief Clerk to Engineer Track, on **September 5, 6, 7 and 8, 1978**. The **incumbent** of this position was on vacation **during** this time. It **maintains** that Linda K. **Redfoot**, Clerk of Maintenance Way, should have been assigned the position. Therefore, the Organization asks that Claimant be **compensated** for the difference in pay of what she earned and what she **would** have earned on the position of Chief Clerk to Engineer Track.

Carrier on the other hand, contends that the Agreement was not violated. It states that the work of the vacationing **employee** was handled **in** accordance with Article 6 of the National Vacation **Agreement**. It asserts that it is not obligated to consult with the local Chairman in the assignment during the absence of an incumbent on vacation.

In the Maintenance of Way **Department** there are seven (7) clerical positions, three (3) of which are designated as Chief Clerks. These three Chief Clerks positions are **known** as Two Star Positions. The filing of vacancies of Two Star Positions is provided for in Rule 2 (c) of the Agreement. It states:

Rule 2 - Exceptions

"(c). The positions shown upon 'Two Star Positions, List No. 1,' or revisions thereof, made a part of this Agreement, shall be **filled** without **advertising** by agreement between the Department Head and the Local **Chairman** or, in districts where there is not Local Chairman, the General Chairman. The positions shown on this list shall be designated by two stars on rosters."

The interpretation of Article 6 of the National Vacation Agreement has been considered **numerous** times by this Board. In Award No. 7330 **we** said:

"There is **much** to be **said** for Carrier's position that the National Vacation Agreement, as interpreted, allows for **some** rearrangement of forces. Neither can fault be **found** with the general proposition that the Vacation Agreement is not to serve as a '**make work**' device.

"**The** expression, 'vacation relief workers' **is** defined in general terms by the National Vacation Agreement to **mean** all persons who fill the positions of **vacationing** employees. That definition, as interpreted, takes in regular employees who may be called upon to **move** from their job to the vacationer's job for the period of **time** during which the employe is on vacation.

"A careful reading of the record out of which **came** the foregoing interpretation conclusively proves that, the needs of the service permitting, and rules not prohibiting, Carrier **may utilize** the services of regular employees for vacation relief even to the extent of moving a regular employe from his job to the vacationer's job for the period of **time** during which the employe is on vacation."
(**Emphasis added**)

From the evidence, presented, it is apparent that there has been no precedent on this property **requiring** Carrier to consult with the Local Chairman in the filling of Two Star Positions account vacations. Further, Rule 2 (c) is an exception to the advertising rule and is applicable only when a position would be **otherwise** advertised and filled in that manner. Here, there is no language contained in this Agreement to obligate Carrier to advertise vacancies created by vacationing employees.

For these reasons, this Board is of the opinion that there was no requirement to consult the local Chairman prior to filling a **Two** Star position when the regular **incumbent** is on vacation. Therefore, the claim 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 diepute involved herein; and

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *A. W. Poulos*
Executive Secretary

Dated at Chicago, Illinois. this 3rd day of November 1981.