

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26214
Docket Number CL-26132

John E. Cloney, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood
(GL-9953) that:

1. Carrier violated the Clerks' Rules **Agreement**, and in particular Rule 9, when it denied Mr. M. D. Diehl's **request** to rearrange in force to the 8:00 a.m., Agent-Telegrapher position at Carthage, Missouri, beginning **December** 15, 1982. (Carrier's file 380-3818).

2. Carrier shall now **be** required to **compensate** Mr. Diehl eight (8) hours' pay at pro rata rate for December 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 1982 and January 1, 1983, total amount being **\$1,480.67**, as outlined in letter of claim dated February 1, 1983."

OPINION OF BOARD: Claimant was the **regularly** assigned Star Agent **Telegrapher** at Pleasant Hill, Missouri. D. J. Stephens was assigned as Telegrapher at Carthage, Missouri, 115 miles south of Pleasant Hills. Stephens was scheduled to take personal leave and vacation from December 15 to 31, 1982. Claimant requested to rearrange to the position for the duration of the vacancy under Rule 9(b). The request was denied and the **position** was protected by a clerical employee who was headquartered at Carthage. When Claimant inquired why his **request** was denied he was notified by M. A. **Armstrong** it was "**Due** to the needs of the service. . . . "

Rule 9(b) reads in part:

"Until an **agreement** is reached establishing an extra board, temporary positions and vacancies which Carrier elects to fill will be filled by rearrangement of the regular assigned employees giving senior employees their preference"

The Clerks Extra Board Agreement of the parties states:

"1.(a) Extra **Boards** are hereby established as listed in the **attachment** hereto for the filling of temporary vacancies **and** providing vacation relief on positions subject to the Clerks Agreements.

* * *

2.(b) In filling vacancies and providing vacation relief of five or more days duration, regularly assigned **employees**, including employees assigned to the extra board, may elect to rearrange pursuant to the provisions of Rule 9 of the basic agreement before applying the provisions of this extra **board** agreement."

(Carthage is one of the locations at which an Extra Board was established).

Carrier contends there would have been additional cost for meals, **lodging** and travel expense if Claimant's request had been granted, because **someone would** have to be sent to Pleasant Hill to protect that **assignment**. Carrier contends a vacation vacancy is not a vacancy and Carrier is not obligated to **incur** a greater cost in filling a vacation vacancy.

It bases this position on Article 12 of the 1941 Vacation Agreement, parts of which state:

"(a) **Except** as otherwise provided in this Agreement a Carrier shall not be required to assume greater expense because of granting of vacation than **would** be incurred if an employee were not granted a vacation and was paid in lieu **therefor**
. . . .

(b) (vacation) absences **from** duty will not constitute 'vacancies' in their positions under any agreement. . . . "

Carrier also relies heavily on a June 23, 1981, letter to General Chairman **Taggart from** Director of **Labor** Relations Sayers regarding Rule 28 and Award **No. 298** that:

"We have agreed, however, to one exception to this principle and that is, in the case of an employee requesting to fill a vacancy under Rule 9 (**Oldhead-ing**) on a position away from his headquarters point will be considered eligible for the benefits provided in Rule 28 (on the Per Diem Agreement) provided Carrier **would** otherwise incur this expense in filling this vacancy.

This is being done in the interest of encouraging employees to request to ~~oldhead~~ vacancies and with the understanding that Carrier will not ~~be~~ liable for more expenses than will be incurred if the vacancy is filled under other rules of the ~~Agreement.~~"

Carrier further argues **Rule 9** is general while the Agreement regarding vacations is specific and therefore prevails.

Finally, Carrier contends that even if a violation of the Agreement were to be found Claimant has suffered no loss and what is really being sought is a penalty.

The Organization points out that on the property it brought to Carrier's attention correspondence dated November 4, 1982, among Carrier Officials involved in this Claim discussing possible cancellation of certain "old-head" rights.

In that correspondence M. A. Armstrong, one of the ~~two~~ persons to whom Claimant addressed his original request, had written:

"The fact that the regularly assigned man, rather than the extra or furloughed clerk collects the per diem does not concern me, but the disruptive effect on the total work force causes me much concern. I have been told I have right to deny ~~oldhead~~ requests, but my experience has been that such denials are difficult to defend, and most often result in time claims, and always produces dissension, neither of which would be necessary if ~~we would~~ cancel a bad agreement "

This Board cannot agree with Carrier's position that Rule 9 is not applicable. The **Extra Board Agreement** specifically provides " . . . vacation relief of five or ~~more~~ days . . . employees . . . may elect to rearrange pursuant to . . . Rule 9." Whatever might ~~be~~ the merit of the argument that **General Rules** must **submit** to specific **Rules**, we conclude the language **quoted** is specific and clear. **While** an absence caused by a vacation **does** not constitute a "vacancy" because of Article 12 of the Vacation Agreement, the **Extra Board Agreement** provides **methods** for filling vacancies and for providing vacation relief. Surely that is what is involved here.

Believing as we do that Rule 9, and not the Vacation Agreement, **gov-**ems this dispute, we are faced with the question of the propriety of sustaining what in effect is a Claim for damages. There are only limited circumstances in which this **Board** will grant such relief.

Here Claimant's **request** was made to a Carrier Officer who had only recently written his criticism of the practice of "oldheading" and urged cancellation of "a bad agreement," noting that denials of such **requests** were "difficult to defend." Shortly thereafter when Claimant made his request he nevertheless denied it. When Claimant asked why his request was denied this same Official responded on **December** 16, 1982, "**Due** to the needs of the service your request for exercise rights under Rule **9A** is denied." There was no mention of the Vacation Agreement or of additional expense to Carrier. **The** question of additional expense in fact was not raised until March 17, 1983. **We** believe these circumstances require the Agreement **be** protected by sustaining the Claim as made.

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: 

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.