

The Third Division consisted of the regular members and in addition Referee Edwin H. Ben" when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood
(**GL-10052**) that:

1. Carrier violated the effective Clerks' Agreement when, on November 6, 1984, it failed to call Clerk Harry **Heller** for a short vacancy on a crew clerk position in accordance with said Agreement.

2. Carrier shall now compensate Mr. **Heller** for eight **(8)** hours' pay at the time and one-half rate of a crew clerk position for November 6, 1984."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time this Claim arose, Claimant was the regular incumbent of a Crew Clerk position. Claimant's position was relieved on rest days by a regular established relief position held by J. Jordan.

November 6, 1984, was Claimant's rest day. On that date, the relief employee, Jordan, was absent due to illness. No qualified extra board employees were available to fill the vacancy created by Jordan's absence. Rather than calling Claimant to fill the position resulting from Jordan's marking off, the Carrier removed Chief Yard Clerk D. Novak from his position and required him to fill the vacant Crew Clerk position. The Carrier then called Extra Board Clerk G. **Griner** to fill the position vacated by Novak. Claimant maintains that since he was available he should have been called to fill the vacancy created by Jordan's absence. Claimant seeks compensation at the punitive rate.

The relevant Rules provide:

"RULE 53

SICK LEAVE

* * *

(I) It will be optional with the Carrier to fill, partially fill or blank a position of an employe who is absent account his personal sickness and is receiving an allowance under this rule. If the Carrier elects to fill the vacancy, rules of the agreement applicable thereto will apply. The right of the Carrier to use other employes occupying positions coming under the scope of this agreement to perform the duties of the position of the employe absent under this rule is recognized.

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RULE 64

EXTRA BOARD

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(D) In providing relief on short vacancies of less than five (5) days or of an unknown duration, the following order of precedence will be observed:

1. By using the extra board employes on a day to day (trick to trick) basis and on a rotating basis.
2. If (1) above fails to provide an occupant and employes on the extra board are not available or have completed their assignment that day, or their five assignments that week, the relief shall be provided on a day to day basis by using the incumbent on his regular scheduled day off.
3. If paragraph (1) and (2) fail to provide an occupant, the Company may use regular assigned employes (including extra board employes) on a seniority basis, from such employes who have an application on file to protect such service.

* * *

The above Rules provide a very specific procedure for the filling of vacancies. When an **employee** is sick, Rule 53 gives the Carrier the option of filling, partially filling or blanking the position. If the Carrier chooses to exercise the option of filling the vacancy, then the "rules of the agreement applicable thereto will apply." Here, the Carrier opted to fill the vacancy. The relief employee's absence presented a "relief on short vacancies less than five (5) days" thereby requiring the provisions of Rule 64 to apply. Rule **64(D)(1)** first permits use of Extra Board employees. Due to lack of a qualified employee, the Carrier did not fill the vacancy from the extra board. Since the extra board did not produce an employee to fill the vacancy, Rule 64(D)(2) requires that "the relief shall be provided . . . by using the incumbent on his regular scheduled day off." The incumbent was Claimant. Therefore, by failing to **use** Claimant to fill the vacancy created by the mark off of the relief employee after the extra board did not provide an employee to fill the vacancy, the Carrier violated the specific requirement of Rule 64(D)(2).

The Carrier's argument that it had the right under Rule **53(I)** to use employees occupying other positions to perform the duties of an absent employee does not change the result. The Carrier's statement is correct. However, when using employees under the Agreement to fill a vacancy as occurred in this matter as a result of the Carrier's exercising its option to fill a vacancy, Rule 53 still requires that the "rules of the agreement applicable thereto will apply." Hence, the Agreement's specific terms had to be followed, in this case the specific provisions of Rule 64. Any other interpretation would render the specific procedure agreed to by the parties in Rule 64 meaningless.

We shall therefore sustain the Claim. Under the circumstances, we shall require that Claimant be compensated at the straight time rate. See Third Division Award 26340.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1988.