Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27105
THIRD DIVISION Docket No. MW-26646
88-3-85-3-388

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned and used Assistant Foreman R. Arledge instead of cut-back Foreman J. Key to fill a vacation vacancy as foreman at KC Junction, Covington, Kentucky, June 1, 1984 to June 13, 1984 (System File C-TC-2364/MG-4793).

(2) Mr. J. Key shall be allowed the difference between what he would have received at the foreman's rate and what he was paid during the claim period as a trackman."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The disposition of this dispute hinges on an appropriate application of Section 12(b) of Appendix K of the schedule Agreement. Appendix K is a snythesis of the December 17, 1941 National Vacation Agreement, the amendments thereto and reads as follows:

> "As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

In the case at bar, and specifically on June 1, 1984, the regularly assigned Foreman at KC Junction began his regularly scheduled vacation. It ran from June 1, 1984, through June 13, 1984. Carrier decided that it was necessary to fill the Foreman's position during his vacation and accordingly, an Assistant Foreman was assigned to fill the position. Claimant who established and held seniority as a Foreman, was working at that time as a trackman at KC junction, Covington, Kentucky. He asserted that he was entitled to said position, since the Assistant Foreman was junior in seniority. Initially, he contended that Carrier violated the January 30, 1984, Coordination Agreement relative to Maintenance of Way employees in the greater Cincinnati, Ohio terminal, involving the Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railway Company and the Seaboard System Railroad. Later, as the claim progressed, Claimant argued that Carrier violated the Section 12(b) of Appendix K of the schedule Agreement and maintained that he was entitled to the work.

In response, Carrier asserted that the aforementioned Coordination Agreement was inapplicable, since the force allocation tables therein were germane to force increases or permanent position vacancies, not vacation vacancies. Moreover, it was neither the intent of the Coordination Agreement nor the B&O Agreement to use a Trackman over an Assistant Foreman in filling a Foreman's vacation vacancy. On this point it noted that the practice had been and continues to be that the Assistant Foreman of a force will be upgraded to fill a Foreman's vacancy. It also took umbrage to Claimant's later contention that said assignment violated Section 12(b) of Appendix K, arguing that this belated position was new argument and hence not properly before the Board. However, it referenced several Third Division Awards with respect to the intended application and interpretation of Section 12(b) and implicitly observed that Carrier had substantial latitude in applying the principle of seniority. (See Third Division Awards 8128, 17146, 24771, and 4351.)

In considering this case, we concur with Carrier's position. We will not discuss the relevancy and intended application of the January 30, 1984, Coordination Agreement, since the pertinent sections thereof, were not designed to address vacation vacancies. Sections 6 and 7 of that Agreement relate to force reductions or increases or vacancies created by the departure of regularly assigned employees. These employment scenarios were not present here.

In a similar vein, careful reading of Section 12(b) of Appendix K within the context of the parties observable practice on the property, and within the precedential ambit set by our prior decisions, does not require the strict invariant application of seniority when filling vacation vacancies. In essence, the concluding phrase of Section 12(b) that "effort" will be made to observe seniority is an admonition rather than a mandatory inflexible contractual obligation. For these reasons, we are compelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.