

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10146) that:

(a) Carrier violated the rules of the current Clerks' Agreement at Kansas City, Kansas, on October 7, 1985, when it failed and/or refused to allow J. E. Mitchell, Station Department, to displace a junior off-in-force-reduction employee off a short vacancy of Relief 5 Position No. 7705, and

(b) J. E. Mitchell shall now be compensated eight (8) hours' pay at the rate of Relief 5 Position No. 7795 for October 7, 1985, in addition to any other compensation she may have received for this day."

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.

Claimant, with a seniority date of April 22, 1974, in October 1985 was an employee in "off-in-force-reduction" status, with a notice of availability on file under Rule 14-B to protect short vacancies at Kansas City, Kansas. Commencing Monday, September 30, 1985, she protected a short vacancy on Position No. 6051, 7:00 AM - 3:00 PM, Monday-Friday. Claimant was released from that short vacancy at 3:00 PM on Saturday, October 5, 1985, on account she had worked forty (40) straight time hours in the previous workweek. On Sunday, October 6, 1985, Carrier filled a short vacancy on Relief Position No. 5, occasioned by the regular incumbent's vacation. J. E. Jackson, an employee junior to Claimant in "off-in-force-reduction" status, was assigned to that short vacancy, even though she was at that time marked off due to illness. As of Sunday, October 6, 1985, Claimant was not in line for that "secondary" short vacancy under the terms of Rule 14-C(1) or 14-F, because she had worked

forty hours in the prior workweek. Therefore, Carrier correctly called the senior regular assigned employee J. C. Carothers, with seniority date of November 20, 1974, under Rule 14-C(2) to fill the secondary vacancy commencing Sunday, October 6, 1985.

Later on that Sunday evening, at 11:30 PM, Claimant attempted to displace onto the "secondary" short term vacancy on the Relief Position No. 5. Carrier declined that request on grounds that the short vacancy was then physically occupied by Carothers, an employee substantially senior to Claimant. On Friday, October 11, 1985, J. E. Jackson returned from sick leave and took over protection of the short term vacancy on Relief Position No. 5, at which time senior employee J. C. Carothers returned to her regular assignment.

In the meantime, after Claimant's attempted displacement was quashed on Sunday, October 6, 1985, she marked off for Monday, October 7, 1985, for "personal reasons." Claimant then elected to protect an altogether different short vacancy commencing Tuesday, October 8, 1985. She also filed the present Claims seeking earnings of Relief Position No. 5 for October 7, 1985, to which she claimed entitlement under Rule 14-F of the Agreement.

The Rule most pertinent to this case is Rule 14, reading as follows:

"RULE 14 - FILLING SHORT VACANCIES

14-A. Vacancies of 15 work days or less duration shall be considered 'short vacancies' and, if to be filled, shall be filled as hereinafter provided in Rule 14.

14-B. Employees hereafter hired must, for 180 consecutive days following the date they establish seniority, make themselves available, except while regularly assigned, for short vacancies and vacation relief and will be called under the provisions of Rule 14-C and must promptly report for duty or forfeit all seniority rights. Off-in-force reduction employees with seniority in excess of 180 days, who desire to be used for short vacancies and vacation relief, must file written notice of availability with their employing officer, with copy to the Division Chairman, designating points and grades of work (as defined in Rule 2) for which they will make themselves available. In the application of this Rule, Grades 1 and 2 are considered one grade. Notices of availability may be changed and/or withdrawn by giving ten days written notice to parties receiving original notice. Those with notice on file, will be called as provided in Rule 14-C and must promptly report for duty. The senior qualified off-in-force-reduction employee available at the point where the vacancy exists may be used on a day to day basis pending arrival of the

senior off-in-force-reduction employee called for such vacancy.

14-C. When providing short vacancy relief the following order of precedence will be observed:

- (1) By calling the senior qualified off-in-force-reduction employee available at straight time rate not then protecting some other vacancy. (Such off-in-force-reduction employee not thereby to have claim to work more than 40 straight time hours in his work week beginning with Monday).
- (2) By using the senior qualified regularly assigned employee at the point who has served notice in writing of his desire to protect such service.

14-D. If the above alternatives do not provide an occupant for the short vacancy, it may be filled without regard to the seniority rules of this Agreement; however, when the vacancy is protected on an overtime basis (other than overtime that may accrue to an employee filling the vacancy under provisions of Rule 14-C), the following shall apply:

- (1) If the vacancy is on a rest day relief position the regular occupants of the positions being relieved shall protect the rest days of their own position if they so desire.
- (2) Vacancies, including vacancies on rest day relief positions not filled by (1) above, shall be protected on a day to day basis by the senior qualified and available employee in that class of service at the point who has served notice in writing of his desire to protect such service. Such employee is not to be considered available to protect such service on any day it would prevent him from protecting his own assignment.

14-E. If the above alternatives do not provide an occupant for the short vacancy, it may be filled by forcing the junior qualified and available off-in-force-reduction employee to protect the vacancy.

14-F. An off-in-force-reduction employee, upon being relieved from a short vacancy due to having worked 40 straight time hours in his work week beginning with Monday or upon completion of a short vacancy may, if request is made within 72 hours, place himself upon another

short vacancy (including the one from which relieved) occupied by a junior off-in-force-reduction employee, except such placement shall not be permitted until such senior off-in-force-reduction employee can assume the position without working in excess of eight hours on any day or 40 straight time hours in his work week beginning with Monday. A junior off-in-force-reduction employee affected by such placement may then have the same rights.

NOTE 1: A regularly assigned employee used under the applicable provisions of Rule 14 will:

- (a) be paid time and one-half for time worked in excess of 40 hours or on more than five days in the work week of his regular assignment in moving to the short vacancy.
- (b) assume the rest days of the assignment on which he is protecting the short vacancy.
- (c) not be paid time and one-half for time worked in excess of 40 hours or on more than five days in a work week in returning to his regular assignment.

NOTE 2: An off-in-force-reduction employee used under the applicable provisions of Rule 14 will:

- (a) be paid time and one-half for time worked in excess of 40 hours or on more than five days in any seven-day period beginning with Monday.
- (b) assume the rest days of the assignment on which he is protecting the short vacancy."

In the facts of the case, Rule 14-F does not support this Claim. If the "secondary" short term vacancy had been occupied on Monday, October 7, 1985, by an "off-in-force-reduction employee" junior to Claimant, her displacement request should have been honored. But the "occupant" of the short term vacancy on that day was the senior employee Carothers, who had validly been assigned to the short term vacancy under Rule 14-C(2). Nothing in the express language of Rule 14-F or any other cited rule gave Claimant the right to displace the senior employee in such a situation. Nor is the alleged binding past practice of such displacements persuasively demonstrated on this record.

A W A R D


Claim denied.

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Award No. 28032  
Docket No. CL-27553  
89-3-86-3-829

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest.

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois this 10th day of August 1989.