

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10253) that:

1. The Carrier violated the Rules Agreement, effective January 1, 1983, particularly Rule 12(c), the principles of seniority and others when the Carrier run around senior qualified available employees R. O. Johnson and R. A. Lahti when filling short vacancies on the Agent's position at Keenan, Minnesota, on August 11, 12, 13, 14, 15, 29, 30; September 16, 17, 18, 19, 20, 27; October 2 and 3, 1986, and filling the Agent's position at Proctor, Minnesota, on September 11, 12, 26, 29, 30; October 1, 9, 10; November 14 thru November 26, and December 1, 1986, utilizing instead junior employee W. M. Clark.

2. Carrier shall now be required to compensate Claimant R. O. Johnson and R. A. Lahti eight (8) hours pro rata rate at the respective Agency rate (Keenan or Proctor) for each of the following claim dates:

R. A. Lahti:	August 11, 12, 13, 14, 15, 29, 30;
Employee #1918	September 11, 12, 16, 17, 18, 19, 20, 26, 27, 29, 30; October 1, 2, 3, 9 and 10, 1986, and continuing, per Rule 20(d), for each and every day that a junior employee works.
R. O. Johnson:	November 14, 1986 thru November 26, 1986,
Employee #4235	December 1, 1986, and continuing, per Rule 20(d), for each and every day that a junior employee works."

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.

On the dates listed in the Claim, temporary (short) vacancies existed on certain Class 2 positions by reason of vacation, illness or personal leave. The Carrier appointed Employee Clark to work those positions. It is undisputed Clark was junior to the above named Claimants. The Organization argues the Carrier's right to fill Class 2 positions without regard to seniority is restricted to permanent positions since Rule 12(c) grants furloughed employees the right to fill short vacancies on a seniority basis. The Carrier, however, avers that Agreement Rules which permit the filling of Class 2 positions without regard to seniority rules does not limit application to permanent vacancies. The Carrier contends the conclusion is not solely its own and stresses that in an identical dispute involving the same parties, Third Division Award 25526 held that Class 2 positions were specifically exempted from seniority application and "... the general seniority reference of filling vacancies in 12(c) has no application."

The Organization disputes the findings of Award 25526 arguing that four key words were not taken into consideration. Rule 1(f) states:

"The following positions may be filled without regard to seniority rules, but will be advertised. (Emphasis added)


The Organization believes the underlined phrase restricts the Rule to the filling of permanent vacancies only. This conclusion lacks logical support in that it requires a finding the parties intended to be more restrictive in the filling of temporary vacancies than in the filling of permanent Class 2 positions. In addition, this Board has repeatedly expressed reluctance to set aside prior Awards involving essentially the same facts, Agreement rules, and parties unless a decision is found palpably erroneous. See Third Division Awards 14019, 20714, and 22406. We do not so find in this matter and will, accordingly, deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1990.