

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(The River Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10335) that:

1. Carrier violated the effective agreement when it failed to fill a short vacancy on Job 101 on December 17, 1987.
2. Carrier shall now compensate Clerk Harry Heller for eight (8) hours' pay at the time and one-half rate of Job 101 for the above referred to date."

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 pivotal question in this dispute is whether Carrier under the applicable Controlling Agreement is estopped from blanking a temporarily vacant position. On December 17, 1987, the regularly assigned Yardmaster marked off from his position. His assigned hours were 7:00 A.M. to 3:00 P.M. The crew clerk was never apprised of this mark-off and accordingly he was moved because of operational need from his 7:00 A.M. Chief Yard Clerk's position to the Yardmaster's position. Carrier decided to blank the Chief Yard Clerk's position for that day because no clerk was available to fill the vacancy at the pro-rata rate of pay and another clerk was working that turn.

On December 18, 1987, Claimant filed a Claim contesting the blanking of the Chief Yard Clerk's position on the grounds that said action violated the Controlling Agreement, particularly Rules 11, 37, 50, 53 and 64. He also cited Article IX, Section 2(c) of the December 11, 1981 National Agreement as controlling. He was off duty on December 17, 1987, and available to fill the position.

Specifically, Claimant contends that under the cited Rules of the Agreement Carrier can only blank a short-term vacancy if the following events occur:

1. The incumbent of the position blanked is off due to illness and receiving sick leave pay.
2. The incumbent is on paid personal leave or rendering jury service or appearing as a witness in matters not directly involving the Carrier.

He asserts that absent these defining circumstances, Carrier cannot interpolate by unilateral interpretation additional exceptions.

Carrier contends that Rules 11 and 64 merely set forth procedures to be followed in filling vacancies and do not impose a definitive directive to fill all short term vacancies. It asserts that Claimant has not pointed to any provision of the Agreement which prohibits management from blanking or partially blanking a temporarily vacant position and also observes that Rules 11 and 64 are directory and not mandatory. It maintains that unless Claimant can show that any Rule of the Agreement specifically prohibits it from blanking a position, then it has the right to undertake such action. It cited Award 2 of Public Law Board No. 4115 as dispositive of this issue.

In considering this case, we agree with Carrier's position. While Rules 50 and 53 provide Carrier with discretionary authority to fill or blank temporarily vacant positions, this authority is subsumed under the broader aegis of a witness - jury duty or sick leave provision and is singularly directory rather than mandatory. We have examined the other provisions of the Agreement particularly as they relate to short vacancies and extra board assignments and also the arbitral decisional law on short vacancies.

Based on this comprehensive review we cannot conclude that Carrier is prevented by Rule language from blanking a position under the facts herein. Accordingly, 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 30th day of April 1991.