

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31812
Docket No. CL-31942
96-3-94-3-307**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Chicago Central and Pacific Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11050) that:

1. Carrier violated the effective agreement when it assigned Ms. Susan M. Bulick to a temporary vacancy during the period from June 18 through June 27, 1993, and then failed to permit her to remain thereon until the vacancy ended;

2. Carrier shall now compensate Claimant Bulick eight (8) hours' pay at the time and one-half rate for June 18, 19, and 24, 1993; eight (8) hours' pay at the straight time rate for June 20 and 23, 1993; and four (4) hours' pay for June 22, 26 and 27, 1993."

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 employee 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 were given due notice of hearing thereon.

This dispute concerns the pay and scheduling to which the Claimant was entitled based on requesting placement on a short-term vacancy in a higher-rated position. The Claimant is an OIS Operator, regularly scheduled from 11:59 P.M. to 7:59 A.M., with Tuesday and Wednesday rest days. The vacancy was a Class III Accounting position, with hours from 7:00 A.M. to 4:00 P.M. and rest days of Saturday and Sunday.

At the outset, the Board is faced with confusion as to the duration of the vacancy. The Organization's Submission suggests it was a two-week vacation absence from Monday, June 14, until Monday, June 28, 1993. The Claimant states she applied for the "step-up" for the week beginning June 14 and that she was further advised on Sunday, June 20, that she would fill the higher-rated vacancy for four days commencing June 21; for this reason, she stated she was withheld from her regular June 20 schedule beginning at 11:59 P.M.

Again according to the Claimant, she was advised on June 21 that by "error" she had been misinformed, and there was no vacancy on the Class III Accounting position that week. Nevertheless, she worked the higher-rated position on June 21 and June 22 before resuming her regular position.

In contrast, the Carrier contends that the Claimant first applied for a one-week vacancy beginning June 14 and then separately applied for a two-day vacancy on June 21-22 (voluntarily taking off her regular June 20 assignment to be available).

There is at least agreement as to the request for the first week. In that week, the Claimant worked as follows:

- June 14-17 - 7:00 A.M.-4:00 P.M., Class III Accounting position (no claim for these days).
- June 18 -- Held off Accounting position, returned to regular position to work 11:59 P.M.-7:59 A.M., at regular rate.
- June 19 -- Worked regular position and hours (sixth work day in week; this was rest day of Class III position).
- June 20 -- As noted above, did not work.

The June 11, 1992 Memorandum of Understanding concerns vacancies of 25 days or less and states in pertinent part as follows:

"(b) In filling short vacancies . . . the following procedure shall be used:

(2) By the senior qualified regular assigned employee in the same zone who desires to fill the vacancy. If the vacancy is less than five working days, the employee may return to his/her regular position at the expiration of the vacancy. If the vacancy is of five or more days' duration, the employee must observe the rest days of the vacant position during and at the end of the vacancy. The employee filling the vacancy must remain thereon for its duration unless displaced through the exercise of seniority or assigned to another position by bulletin."

As best as can be determined from the record, the vacancy here was for at least one week (five working days). On the fifth day (June 18) the Carrier assigned the Claimant to her regular job, presumably exercising its right not to fill the vacancy that day. The Board finds no Agreement violation in this move. Then the Claimant was assigned to work on her regular position on Saturday, June 19 – a rest day of the vacant position. Since the June 11, 1992 Memorandum of Understanding requires observation of the filled vacancy's rest days, this sixth day qualifies for overtime work and must be paid as such.

As to the week beginning June 21, the record is beclouded as to the Claimant's status – was there a continuing vacancy or did she simply fill the Class III position for two days? In this state of the facts, the Board cannot determine if an Agreement violation occurred in the Claimant's scheduling.

The Award will sustain the claim to the extent of paying the Claimant the difference in premium pay over straight-time pay for June 19, 1993. The remainder of the claim is denied or dismissed.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.