

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

LEHIGH VALLEY RAILROAD COMPANY

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

1. Carrier violated the existing clerical agreement and letter of agreement dated June 13, 1941 when it suspended work August 9, September 1 and 2, 1948 on the clerical position held by Mr. L. E. Baker, Stores Department, Sayre, Pa., who was given permission to be absent from duty on dates shown. None of Mr. Baker's work was performed by other employees in the office. It was allowed to accumulate and was performed by Mr. Baker upon his return to duty. The three (3) days' pay were deducted from Mr. Baker's earnings.

2. That Mr. Baker be re-imbursed for three days' pay (August 9, September 1 and 2, 1948) due to work suspended on his position.

EMPLOYEES' STATEMENT OF FACTS: Mr. L. E. Baker has a seniority date of November 1, 1922 on the Group 1 Stores Department Roster. Hours of service 8 A.M. to 5 P.M. (one hour for lunch) Mondays to Fridays, inclusive; Saturdays 8 A.M. to 12 Noon. Rate of pay \$241.20 per month.

The duties of his position consist of approving P. D. Bills, check stock panels and other miscellaneous duties.

On or about August 2, 1948, Mr. Baker requested permission from his superior to be absent on August 9, 1948 in order to visit with his family. His superior made no attempt to fill the position and none of Mr. Baker's work was performed, but remained undone until his return on August 10, 1948. One day was deducted from his wages.

On or about August 30, 1948 Mr. Baker again requested permission to be absent on September 1st and 2nd, 1948 for personal reasons. The Carrier again blanked his position, none of the other employees performing his work, but it remained undone until his return to duty on September 4, 1948 when he was required to catch it up. Two days' pay was deducted from his wages.

In both instances the work required to be performed did not cost the carrier any money.

Correspondence is reproduced in connection with this claim:

off on short notice and no qualified relief is available, provided the Local Chairman is apprised of the facts. It is the contention of the Carrier that the requirements of the Letter Agreement referred to were fully met in this instance.

The last paragraph of the Letter Agreement deals with absentees on short notice where no qualified relief is available. In the August 9th instance, there was no notice, nor was there any qualified relief available. There was no opportunity to give advance notice to the Local Chairman that the position would not be filled, and this situation was created by the employee's own act. The Letter Agreement makes no provision for a situation of that kind, and the Carrier was obliged to make the best of the situation and leave the position unfilled.

With respect to the absence of September 1st and 2nd, of which short notice was given, the Carrier handled the situation strictly in accordance with the provisions of the last paragraph of the Letter Agreement. There were no qualified employees available to fill the position, and the Local Chairman was duly notified to that effect. The clear inference to be taken from the wording of the rule is that under such circumstances no claim would be presented.

(Exhibit not reproduced).

OPINION OF BOARD: The claim is premised on facts which, in many respects, are in dispute. It is represented by the Brotherhood that the employee on August requested permission, which was granted, to be absent from duty on August 9. He was absent on that day and his position was not filled. It is not disputed that there were no qualified clerks on the extra list. There is a dispute as to whether any of the lower rated employees were qualified to do the work. The Carrier contends that they had no actual notice of the specific day the employee was to be absent, and when he failed to report for duty on the 9th, the Carrier had no opportunity to notify the local chairman. The employee notified the Carrier on August 30 of his intended absence from duty on September 1 and 2; and on that occasion the Carrier notified the local chairman. In neither instance did the Carrier move a lower rated employee into the temporary vacancy. The reason assigned was that no qualified employee in a lower rated position was available to do the work. This is disputed by the Organization.

The claims are premised on Rules 13 and 38 of the Agreement; and more particularly upon the understanding of the parties expressed in Carrier's Memorandum of June 13, 1941. The pertinent part of the June 13, 1941 Agreement reads as follows:

"* * * the committee agreed that when vacancies occur in the higher rated positions (when the absentee is not paid), lower rated qualified employees will be moved up but we are not required to fill the lowest rated position if relief is not readily available.

When employees report off on short notice and no qualified relief is available, the local chairman should be apprised of the facts, so that claim will not subsequently be presented."

On the dates in question, the Carrier contends that there were no qualified persons in lower rated jobs that were available to fill the vacancy created by the Claimant's absences. The Carrier has the primary right, which it may not exercise capriciously, to determine whether an employee is qualified to perform duties of a given position, and in a dispute, the burden is on the Organization to establish that qualified relief was at hand. Based solely on the submissions in this case, we do not believe that burden has been sustained, and we find as a fact that no qualified relief was available on the dates named in the claim.

There is also a dispute as to whether the Carrier had actual notice that the employe would be absent on August 9. It admits it had notice of the fact that the vacancy for a day was imminent and pending. Whether it had advance knowledge of the actual day the vacancy would occur is immaterial. The Carrier also knew the qualifications of its staff and knew whether a qualified lower rated employe would be available to fill the impending vacancy. Under such circumstances the intentment of the Agreement of June 13, 1941, was that it notify the local chairman. It is admitted that it did not.

Under date of December 8, 1947, the Carrier paid a claim when the employe (same as in this case) was absent and his position not filled. The reason assigned by the Carrier (see Carrier's Reply to Employes' Oral Brief, this docket) was that "Carrier failed to advise the local chairman of Mr. Baker's reporting off, and there being no qualified relief available, which would be the Carrier's obligation under Memorandum of Agreement—dated June 31, 1941."

The construction placed on the Agreement by the parties is persuasive; and when applied to the facts of this case, we find that the petitioner should be paid for August 9; but as notice to the local chairman was given respecting the vacancies for September 1 and 2, the claim is not valid for such dates.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement of June 13, 1941, when it failed to notify the local chairman of the impending vacancy on August 9, 1948, in the position held by Baker.

AWARD

Claim (1) sustained per Opinion and Findings. Claim (2) sustained for August 9, 1948; denied for September 1 and 2, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.