

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
ILLINOIS
CHICAGO & EASTERN RAILROAD COMPANY**

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

(1) That Carrier violated rules of the Clerks' Agreement when they declined to accept application made by Albert Strong, regularly assigned to position of Relief Clerk, to fill temporary vacancy occasioned by absence of Mr. F. Kruzan, first trick clerk, Oaklawn Roundhouse, Danville, Illinois, on vacation during period November 12 to 25, 1948, inclusive (12 days); and

(2) That Albert Strong be compensated for wage loss sustained representing the difference between what he did earn on his relief clerk's assignment and what he would have earned on the first trick clerk's (Kruzan) assignment during the time period involved set forth in Section (1) hereof.

STATEMENT OF FACTS: The clerical force at the Oaklawn Roundhouse comprises among others two clerical positions. The first trick Roundhouse clerk position is regularly assigned to Mr. F. Kruzan. His hours of service are 7:00 A.M. to 3:00 P.M., rate \$12.90 per day.

Mr. Albert Strong is assigned to position of relief clerk, i.e., Sunday—relieves first trick clerk, 7:00 A.M. to 3:00 P.M.—rate \$12.90 per day.

Monday—relieves second trick clerk, 3:00 P.M. to 11:00 P.M., rate \$12.21 per day.

Tuesday—relieves third trick clerk, 11:00 P.M. to 7:00 A.M., rate \$12.21 per day.

Wednesday—relieves third trick caller—11:00 P.M. to 7:00 A.M., \$10.60 per day.

Thursday—relieves second trick caller—3:00 P.M. to 11:00 P.M., \$10.60 per day.

Friday—relieves first trick caller—7:00 A.M. to 3:00 P.M., rate \$10.60 per day.

Saturday—designated rest day.

—is not available. In the instant case there was a vacation relief worker available, and Petitioner's demand that claimant should have been permitted to vacate his regular assignment for the sole purpose of performing vacation relief work is without merit.

That a person other than one regularly assigned by bulletin may be employed to perform vacation relief work is recognized by the provisions of Article 12(c) of the Vacation Agreement, wherein it is stated: "A person other than a regularly assigned relief employe temporarily hired solely for vacation relief purposes** **" (Emphasis supplied). Such a person would be a regular vacation relief employe within the intent and meaning of Article 12(b). If such a person is utilized, it is not required that effort be made to observe the principle of seniority with respect to regularly assigned employes.

In the instant case the person who performed vacation relief on Clerk Kruzan's position had heretofore been regularly utilized for that purpose. During 1947 and 1948, Mr. Crouch was used on seven different occasions to relieve Roundhouse clerks absent on vacation. On at least two occasions, once each in the years 1947 and 1948, he was used to relieve Claimant Strong during the latter's assigned vacation period. It is further pertinent that claimant did not on the remaining occasions request that he be used to perform vacation relief work.

The effective agreement between the parties hereto has been interpreted to provide that regularly assigned employes may not be used off their regular assignment without incurring the penalty of an additional day's pay. Under the effective agreement it is not required that vacancies of thirty days or less duration be bulletined for assignment to the senior applicant. Article 12(b) of the Vacation Agreement provides "*** **such absences from duty will not constitute 'vacancies'*** ** under any agreement."

The position here in question was filled by a vacation relief worker within the intent and meaning of the Vacation Agreement. It is the Carrier's position that under the circumstances claimant was not entitled to vacate his regular assignment for the purpose of performing vacation relief work. The claim is without merit under the controlling agreement and should be denied.

The Carrier affirmatively asserts that all data contained herein has been handled with the employe's representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Most of the controlling facts are not in dispute and can be stated thus: Claimant Strong was the regular occupant of the position of relief clerk at Carrier's Oaklawn Roundhouse, Danville, Illinois. One Kruzan, the occupant of the first trick clerk position, worked by Claimant in his relief cycle on Sunday, was granted a vacation of twelve days, commencing on November 12, 1948. Prior to the effective date of this vacation period Claimant applied to his immediate superior for permission to fill the position. Instead of granting this request the Carrier assigned Paul Crouch, a coal chute laborer holding no seniority under the Clerks' Agreement, to fill the position during Kruzan's absence.

There is some controversy between the parties regarding the status of Crouch on the dates in question. The record discloses, as the Carrier points out, that he had been used under somewhat similar circumstances at least six times during the preceding two years. On the other hand it reveals, as the Organization insists, that on November 12, 1948, he was the occupant of a regularly assigned position as coal chute laborer and subject to the terms of another labor agreement. In view of the foregoing facts and circumstances and others to be found in the record we do not believe it can be said or held that on the date he was assigned to fill the involved vacation position Crouch was covered by the terms of the current Contract or was a "regular relief employe," within the meaning of that term as used in Article 12 (b) of the Vacation Agreement, which it is to be noted has not been incorporated into the existing Rules Agreement.

Rule 1 (Scope) in force and effect between the parties contains the following provision:

"Positions or work within the scope of this agreement belong to the employees covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules except in the manner provided in Rule 84."

The last sentence of subsection (b) of Article 12 of the Vacation Agreement reads:

"When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

From what has been heretofore quoted it is clear the work in question belonged to employees covered by the current Agreement. It is equally clear that when a regular relief employee is not utilized to fill the position of an employee absent on vacation, if the position is to be filled, the Carrier is required, even under the terms of the Vacation Agreement, to observe the principle of seniority. Therefore since Crouch was not a regular relief employee or covered by the terms of the Rules Agreement we are constrained to hold that the Carrier's action in assigning him to fill Kruzan's position, November 12 through 25, 1948, resulted (1) in a violation of the Scope Rule (Rule 1) because it gave work to an employee outside the Agreement when that work belonged to the employees covered by its terms and (2) in a violation of Rule 12 (b) of the Vacation Agreement for the reason the Carrier failed to observe the principle of seniority while filling the position with someone other than a regular relief employee.

Although not identical the facts of the instant case are similar to those involved in Award No. 5657 and the conclusion herein announced finds support in what is said and held in the Opinion of that case. Awards Nos. 5108, 5192, and 5697 on which the Carrier relies in support of its position involve entirely different factual situations and are clearly distinguishable.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.