

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

- (1) The Carrier violated and continues to violate certain terms of the current Agreement effective June 23, 1922, and the provisions of the local Memorandum of Agreement dated May 5, 1938 and June 24, 1938, in effect at East St. Louis, Illinois, as well as past practices obtaining thereat, when it failed and refused to fill positions and/or vacancies under the jurisdiction of East St. Louis Freight Agency, in accordance with stipulations contained in said Agreements and established practices of long standing, and
- (2) That the Carrier now be required to restore the past practice and custom of filling the positions and/or vacancies in consonance with certain terms of the current Agreement and the provisions of the local Memorandum of Agreements, and
- (3) Because of the Carrier's arbitrary and unilateral action in promiscuously blanking positions and/or vacancies, that Mrs. Delores Scherrer, and all other employees* adversely affected, be made whole for any and all monetary losses sustained, until these violations are corrected, by reason of the Carrier:
 - (a) Blanking of positions during the life of bulletin and assignment;
 - (b) Blanking of positions during vacation;
 - (c) Blanking of positions due to employees laying off account of sickness or other reasons.

*NOTE: The reparations due individual employees retroactive to April 9, 1947 or date of initial claim be determined by joint check of Carrier's records by Management and Employees' Representatives.

EMPLOYEES' STATEMENT OF FACTS: An Agreement with the Carrier that governs the hours of service and working conditions of the employees,

For the reasons set forth in this submission, Carrier contends that there has been no violation of the agreement of June 23, 1922, and June 24, 1938, or the past practice at East St. Louis Freight Agency; and that the letter from the Terminal Chairman to the Terminal Superintendent of May 5, 1938, is not an agreement and was terminated prior to this dispute and would have had no bearing even if effective; and that claim should, therefore, be denied.

All data in this submission have been presented to Employees in conference or correspondence.

(Exhibits not reproduced).

OPINION OF BOARD: This claim involves the Carrier's employees at its East St. Louis freight agency. It is based on Carrier's failure and refusal, since April 9, 1947, to fill positions and/or vacancies at that point resulting from several different causes. The System Committee of the Brotherhood lists the violations as: (a) blanking positions during the life of bulletins and assignments, (b) blanking of positions during vacation, and (c) blanking of positions when employees are off on account of sickness or other reasons. By so doing the System Committee of the Brotherhood contends Carrier violates the provisions of the parties' effective Agreement applicable thereto, past practices at this point in relation thereto, a local letter of Memorandum of Agreement dated May 5, 1938, and Interpretations of applicable rules of the parties' effective Agreement.

Rules 11 and 12 of the parties' Agreement, effective June 23, 1922, but revised as of September 1, 1927, are applicable here.

Rule 11 provides:

"Bulletined positions may be filled temporarily pending an assignment and in event no applications are received, may be permanently filled without regard to these rules."

This is a permissive rule. It permits Carrier to temporarily fill a position being bulletined pending assignment and, in event no application is received therefor, to do so on a permanent basis. However, it does not require that Carrier must do so.

Rule 12 provides:

"Positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletin."

This is also a permissive rule. It permits Carrier to fill positions or vacancies of 30 days or less without bulletin. However, it does not require that Carrier must do so.

Article 6 of the Vacation Agreement provides:

"The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker."

Article 10 (b) of the same Agreement provides:

"Where work of vacationing employees is distributed among two or more employees; such employees will be paid their own respective

rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

These rules provide certain limits within which Carrier is not obligated to fill the position of an employe who is on vacation. There is no proof that Carrier required the duties of any employe on vacation to be performed by other employes in violation of the latitude permitted.

It is further contended that Carrier has always filled these positions and/or vacancies and that it should not now be permitted to break this custom or practice. The burden of showing the existence of a practice upon which reliance is placed rests upon the party asserting it. While we do not think this burden has been sustained, we shall assume, for the purpose of discussion, that it has. Practices under an Agreement are not controlling in the absence of a rule or rules relating to the subject matter thereof that are uncertain or ambiguous. If the rules relating to the practice are clear and unambiguous, either party is entitled to have them enforced. There is no uncertainty or ambiguity in the rules here involved.

As to the claimed Memorandum Agreement of May 5, 1938, relating to Rule 12 of the parties' Agreement, Carrier contends it was never consummated but, if it was, that the letter of March 23, 1944 from its Superintendent P. H. Waldorf to George M. Schaeffer, the Organization's Terminal Chairman, terminated it. Carrier states this termination was recognized by the Organization as evidenced by the letter of January 11, 1947 from its Division Chairman Raymond Uphoff, to W. E. Curley, Carrier's Superintendent. If the existence of this Memorandum of Agreement was important in determining the issues here presented we would discuss these questions further, but, since it is not, we will refrain from doing so as they might become important to a question involving seniority. For the purpose of our discussion we shall assume the agreement, set forth in the letter of May 5, 1938 from Otto C. Walters, Terminal Chairman, to T. D. Beven, Terminal Superintendent, to have been in full force and effect on April 9, 1947 at the East St. Louis Freight Agency.

The agreement relates to "covering promotion of employes to temporary vacancies" about which the Carrier had apparently asked for clarification. This came about when dissatisfaction arose among employes because of the manner in which Carrier was applying seniority to employes who had been furloughed by reduction in forces. The arrangement provided in the letter Memorandum of May 5, 1938 was intended to alleviate this difficulty by definitely fixing the manner in which Carrier must apply seniority in filling vacancies coming within those to which the agreement referred. It did not change Rule 12 of the parties' Agreement nor was it intended that it should. This is fully evidenced by the discussion set out in Division Chairman Raymond Uphoff's letter of January 11, 1947, addressed to Carrier's Superintendent W. E. Curley.

The same is true in regard to Rule 11 of the parties' Agreement when, as of June 24, 1938, Carrier agreed that, "In the application of this rule in the future, we will agree that the senior furloughed employe, qualified and available, will be called and used in filling a bulletined position temporarily, pending an assignment." This is fully evidenced by the first paragraph of the Organization's Circular No. 23 of July 6, 1938, addressed to "All System Board and Local Lodge Officers and Members".

In Division Chairman Uphoff's letter of January 11, 1947, he stated, "Please consider this as a request for a new agreement to cover the moving of employes working on Rosters No. 3 and No. 5 to extra or temporary work on Roster No. 1, and their return to the lower roster at such work completion." As a result an agreement in regard thereto was entered into

on November 19, 1947. We think this agreement was entered into for the same purpose as the agreement of May 5, 1938.

As already stated, the agreements of May 5, 1938, June 24, 1938, and November 19, 1947, relating to the Freight Agency at East St. Louis, must be read in the light of the purpose for which they were written, that is, how Carrier should apply seniority when conditions of employment existed to which they applied, bearing in mind that such would only be true whenever Carrier deemed it necessary to fill such positions and/or vacancies.

It should be understood that sick leave practice is not involved in this claim and consequently this opinion does not deal therewith.

In view of what we have said, we find the Organization's position to be without merit.

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 has not violated the Agreement, practices or local agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1953.