

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Dudley E. Whiting, Referee

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**PARTIES TO DISPUTE:**

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

**THE DELAWARE, LACKAWANNA AND WESTERN  
RAILROAD COMPANY**

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

(a) Carrier violated and continues to violate the terms of the current Clerk's Agreement in effect between the parties when it failed and/or refused to call regularly assigned Clerk Thomas Howard to fill short vacancies on October 11, 1951 and on subsequent dates in preference to calling regularly assigned employees his junior for such work at the Carrier's Scranton Diesel Shop and Enginehouse Offices; and

(b) The Carrier shall now reimburse Clerk Thomas Howard for an additional day's pay on October 11, 1951, at the rate of time and one-half, based on the prevailing rate of his regular position, or the position to which he should have been temporarily assigned, whichever rate is the higher, and for each date subsequent thereto under similar circumstances, until the violation is corrected by calling him in preference to similarly situated junior employees.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier maintains offices at the Diesel Shop and Enginehouse in the city of Scranton, Pennsylvania. At the time the dispute arose, it maintained approximately twelve (12) full-time regularly assigned clerical jobs arranged in such a manner as to cover 24-hour operations around the clock seven days per week. It also maintained a list of five (5) extra unassigned employees whose services were utilized to fill short vacancies or to perform extra work when the occasion arose for such services. However, on the dates here involved, there were no extra unassigned employees available to fill the short vacancies here in question.

On Thursday, October 11, 1951, Clerk LeStrange was absent from his regularly assigned position by permission of the Carrier. His regular position of Diesel Clerk is assigned from 8:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday. His rate of pay is \$12.86 per day.

**OPINION OF BOARD:** It is here claimed that the use of a clerk with less seniority than the claimant to fill a one day vacancy was a violation of the claimant's seniority rights. The rights available to an employe by virtue of his seniority are those specified in the Agreement.

We have held that, under rules providing for the exercise of seniority in case of vacancies, the Carrier may not disregard seniority in filling short vacancies. See Award No. 4571. There is no such rule in this Agreement. We have also held that employes were entitled to exercise seniority rights to short vacancies on the basis of promotion rules. See Award No. 5255. However, the filling of a vacancy in a lower rated position is certainly not a promotion.

Since there is no rule in the Agreement which supports the claim, it must be denied.

**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 Agreement was not violated.

**AWARD**

Claim denied.

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

**ATTEST:** (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1954.