Award No. 6626
Docket No. CL-6626

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.
(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Velasco, Texas, when it used Mrs. Mayfield to fill temporary vacancies. Also

(b) Claim that the senior employes, holding seniority rights and available to perform the work, be compensated for all losses resulting from the violation.

EMPLOYES' STATEMENT OF FACTS: Mrs. M. D. Mayfield was employed by the Carrier as extra clerk and began work at Henderson, Texas, on September 17, 1951, thereby establishing an "employe status" as of that date in accordance with Rule 3 (a).

Mrs. Mayfield subsequently worked extra at Overton on two occasions.

Having established an "employe status" with date of September 17, 1951, Rule 3 (a) and the agreed interpretation thereof required that Mrs. Mayfield:

". . . . . must work and must be assigned on the basis of the date employe status was established."

fore, it is the position of the Carrier that the contention of the Employes should be dismissed, and the accompanying claim which, in addition to being without basis, merit or justification, is vague, indefinite and uncertain in that it does not set forth a specific claim on a specified date, should be denied. The Employes have not shown what employes, or how, or to what extent any employes lost any time for which they should be compensated as a result of Mr. Mayfield performing services at Velasco.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: From September 17 through September 21, September 24 through 28th, October 22 through 26th, October 29 through 31st, November 1 through 2nd, December 11 through 14th, and December 17 through 22nd, 1951, Mrs. M. D. Mayfield filled vacation vacancies at Henderson or Overton, Texas. During said periods she lived at Henderson with her husband, who was employed there by the Carrier as a cashier. Overton is only 16 miles from Henderson. Mrs. Mayfield had three years previous experience in clerical work for the H&BV and, upon the termination of her service with the Carrier at Henderson, she advised it that she would be available if it had any further employment in her line, located at East Texas.

On December 22, 1951, Mrs. Mayfield's husband took an assignment as Chief Clerk-Cashier at Velasco, Texas, located some 250 miles from Henderson and Overton and she accompanied him to that point. Between March 18 and April 14, 1952, Mrs. Mayfield filled vacancies on various positions at Velasco, where the regularly assigned employes were temporarily absent on vacation, there being no extra or furloughed employes available.

It further appears that subsequent to Mrs. Mayfield's initial employment at Henderson on Septembr 17, 1951, and prior to her employment at Velasco, there were several vacancies in the seniority district for which she was not called and did not apply.

The Employes contend that Mrs. Mayfield established an "employe status" when he pay started on September 17, 1951, and that since she thereafter failed to accept work or assignment when same was available, she forfeited her "employe status" and could not thereafter be used in any capacity, except by agreement with the Division Chairman. A claim is asserted on behalf of the senior available regularly assigned employes at Velasco for the days and periods when Mrs. Mayfield was employed there.

Disposition of the claim calls for a consideration of Rule 3(a) of the applicable Agreement and sections (3), (4), and (5) of the agreed interpretation thereof, dated November 14, 1950. So far as applicable, these provisions read:

> "3(a). An individual acquires an employe status at the time his pay starts, subject to the provisions of Rule 64, * * * "
>
> "(3). Persons who have established an employe status under Rule 3(a) must accept all work that is available to them and must be assigned, and required to accept assignment, to the first position their employe status entitles them."
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> "(4). The Carrier must call the employe for, and the employe must accept, all work to which his employe status entitles him in his seniority district."
>
> "(5). Persons failing or refusing to accept work or assignment when it is available will not thereafter be used in any capacity, except by agreement with the Division Chairman."

Carrier says that the Agreement, properly construed and applied, contemplates that the Carrier may employ two distinct types of new employes, namely, those that intend to become regular employes, and those temporarily employed for the sole purpose of providing temporary vacation relief. Our attention is directed to Rule 12(c) of the Vacation Agreement which states that, "A person other than a regularly assigned relief employe temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year." It appears to be undisputed that Mrs. Mayfield was not employed by the Carrier for more than 60 days in any calendar year prior to her going to Velasco. While Carrier concedes that seniority rights, as such, are not here directly involved, it insists that Rule 12(c) warrants the conclusion that Rule 3(a) and the interpretations thereof quoted above are concerned only with that group of employes who contemplate becoming regular employes, and does not embrace those who are employed for the sole purpose of providing temporary vacation relief.

In support of its position the Carrier calls attention to the fact that five persons established seniority subsequent to September 17, 1951, when Mrs. Mayfield was first employed; that on October 2, 1951, a new employe was hired to fill the position of General Clerk, pursuant to bulletin, while Mrs. Mayfield was working at Henderson; that in ten cited instances persons were employed to perform vacation relief work without any claim being asserted that they had established "employe status"; that Mrs. Mayfield never considered that she had established "employe status" by reason of the work she performed at Henderson and Overton, as shown by the fact that she had voluntarily limited her availability for other employment to East Texas, and never made formal application for employment until May 2, 1952, at which time she claimed an employe's status as of January 18, 1952; that since, under Rule 12(b) of the Vacation Agreement, the absence from duty of an employe exercising his vacation privileges does not create a vacancy in his position which must be filled by application of Rule 17 of the Agreement, as interpreted by Award 5192, it necessarily follows that the Carrier was privileged to use employes temporarily hired solely for vacation relief purposes in prefrence to employes with "employe status", as contemplated by Rule 3(a); that by Award 3416, involving a dispute on this same property, it was held, in effect, that a regularly assigned employe could not be used to fill the position of another employe on vacation, even though such employe was willing to be so used, without subjecting the Carrier to liability to pay twice for the service so rendered; that said Award had the practical effect of depriving a large number of employes of their vacations; that to relieve the situation the Organization's representative in 1947, suggested the use of temporary employes for the exclusive purpose of filling the positions of persons on vacation; and that this practice has ever since obtained.

Aside from the connection in which they are used and the significance that has been attached to them by the parties through past practices, there could not be much doubt as to the meaning of the words "employe status". However, it frequently occurs that simple words acquire a complex or doubtful meaning, when considered in the light of circumstances of their use or the interpretations placed upon them in practice by the parties.

After a careful reading of the entire record, we are of the opinion that the Carrier has established the fact to be that the consistent policy and practice of the parties over a considerable period of time has been not to regard or treat temporary employes used exclusively for providing temporary vacation relief as having attained "employe status" within the meaning of Rule 3(a). The Carrier has detailed many facts calculated to establish that there has been such an understanding and this showing has not been successfully refuted by the Organization. Indeed, many of the facts brought into the record by the Carrier have not been challenged or denied. We think the showing made by the Carrier is sufficient to constitute a preponderance in its favor.

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 Employes involved in this dispute are respectively Carrier and Employes 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 evidence does not establish that the Carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.