

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Norris C. Bakke, Referee

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**PARTIES TO DISPUTE:**

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

**WESTERN WEIGHING AND INSPECTION BUREAU**

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

(a) The Bureau violated the Agreement by not assigning Paul O'jeda, Serviceman, Hutchinson, Kansas, rate of pay \$1.553 per hour, to the Foreman's position during the absence of the regular Foreman, Sam F. Cochran, rate of pay \$15.60 per day, on vacation during the period August 4 to August 16, 1952.

(b) That Serviceman Paul O'jeda should have been assigned to this temporary vacancy of such position in place of junior employee, Serviceman A. J. Manche.

(c) That Serviceman Paul O'jeda be reimbursed for the difference between what he was paid as Serviceman and what he should have been paid as the Foreman, Hutchinson, Kansas during the period referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** It is conceded Foreman Sam F. Cochran, Hutchinson, Kansas, was on vacation August 4 to August 16, 1952. The Employees Exhibits Nos. 1 and 2 from the claimant show without question that when the claimant learned the Foreman was on vacation that he began trying to determine if the Rules Agreement were violated by the Bureau.

Employee's Exhibit 3 covers the initial claim filed with Foreman Cochran August 30, 1952. In declining the claim, as shown in Employees' Exhibit 4, Foreman Cochran apparently relied on the basis that the claimant had no driver's license, which letter was received from Foreman Cochran in long-hand, as apparently the Bureau did not have a typewriter at Hutchinson, Kansas.

The employees in their Exhibit 5 called foreman Cochran's attention to the fact Mr. O'jeda, the claimant, had a driver's license since April 23, 1952 and the Foreman's reply, as shown by Employees' Exhibit 6, was this time typewritten (indicating some Bureau official could have prepared the reply for Foreman Cochran) contending the vacation list was duly posted and when

of the land when we were previously told by this Claimant that he could not drive because he did not have a driver's license; therefore, under the circumstances we had but one alternative, and that was to utilize the services of one of our employes who had a driver's license, thus permitting him to drive our truck.

We are convinced beyond an element of doubt that after reviewing the facts as herein presented you will reach but one conclusion and that is by reason of the Claimant's very action eliminating himself from driving our truck that only one conclusion can be reached and that is this claim must be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to the filing of this claim the Carrier had been in the custom of requiring the Claimant to drive a truck in connection with his work.

In February, 1952, Claimant advised the Carrier he did not have a driver's license, and therefore could not drive the truck any more.

Driving the truck was part of the assigned duties of Foreman Cochran, but was not a part of the assigned duties of Claimant, but even so he did obtain a driver's license in April of 1952, but did not advise Cochran of that fact, so when it came time for Cochran to go on his vacation, he assumed that Claimant still had no driver's license and assigned Manche—a junior employe, to his (Cochran's) vacation assignment.

Cochran did not post the vacation assignment and made no effort to contact Claimant concerning his availability for the vacation vacancy, although Claimant had filled it in 1950 and 1951 and also in 1953 and 1954 after this dispute arose.

Carrier's sole defense to this claim is that Claimant did not have a driver's license. The defense is not good, because at the time that Cochran took his vacation Claimant did have a driver's license, and the Carrier acted at its peril on information that it had received six months before when Claimant did say he had no driver's license.

Another reason why Carrier may not rely on Claimant's statement made in February of 1952 is that the driving of the truck was not part of Claimant's assigned duties, and when this was called to Carrier's attention, the practice of having the servicemen drive the truck was stopped. Therefore the Carrier may not be permitted "to impeach the witness on an immaterial issue."

It is conceded that Carrier made no effort to contact Claimant after February, 1952, and he had no notice of Cochran's vacation schedule.

Conceding that Carrier was not under obligation to bulletin this vacation assignment under "Rule 7—Bulletined Positions" because of a specific provision in the vacation agreement, Carrier was nevertheless under obligation to comply with rule 12 (b) of the Vacation Agreement which requires "effort will be made to observe the principle of seniority."

This is what distinguishes this case from Award 8128 relied upon by Carrier.

Our conclusion is that Carrier violated the Agreement and claim should be sustained.

**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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1958.