Award No. 8707
Docket No. TE-8142

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad Company,

1. That the Carrier violated the terms of the Agreement between the parties when on October 25, 26, 27 and 28, 1954, it failed and refused to permit Operator Sarah Oglesbee to exercise her seniority in accordance with the provisions of Rule 18 (1) of the applicable agreement and displace a junior extra employe occupying a temporary vacancy at Okolona, Mississippi.

2. That the Carrier shall now be required to compensate Operator Sarah Oglesbee for the work from which she was wrongfully deprived on October 25, 26, 27 and 28, 1954, on the basis of 8 hours at the pro rata rate of pay on each of such days.

3. The Carrier further violated the terms of the agreement between the parties when on December 29, 30 and 31, 1954, it failed and refused to permit Operator B. M. Bagwell to exercise his seniority in accordance with the provisions of Rule 18 (1) of the applicable agreement and displace a junior extra employe occupying a temporary vacancy at Conception Street, Mobile, Alabama.

4. That the Carrier shall now be required to compensate Operator B. M. Bagwell for the work from which he was wrongfully deprived on December 29, 30 and 31, 1954, on the basis of 8 hours at the pro rata rate of pay on each of such days.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties to this dispute are on file with this Division of your Board and by this reference are made a part hereof.

There is no disagreement between the parties as to the occurrences which lead up to the instant claim.

tion position on Sunday and held the effort to observe the principle of seniority required by the terms of such section has application to employes who are so situated they would be able to work the position of a vacationing employe without subjecting the Carrier to payment of overtime under other rules of the Rules Agreement." (Emphasis supplied.)

Award **5461**—The Order of Railroad Telegraphers vs. Tennessee Central Railway Company, Referee Alex Elson, decided September 17, 1951. In denying the claim, the Board held that:

"The Vacation Agreement contains no express provisions abrogating the overtime penalty provisions of the schedule agreement of the parties. Accordingly we have held that the scheduled agreement controls.

"The Vacation Agreement, however, makes express provision as to the application of seniority in providing for relief on vacations. Rule 12 (b) not only provides that 'absence from duty will not constitute "vacancies" * * * under any agreement,' but requires only that 'effort will be made to observe the principle of seniority.' The rules do not deal specifically with the subject of applying seniority to vacation relief.

"Under these circumstances, we believe that our prior awards would compel a holding that the Vacation Agreement is controlling."

In Award 5461 this Board very definitely held that the Vacation Agreement takes precedent over other rules in the agreement as to "vacancies" and since the Vacation Agreement specifically provides that "absences from duty will not constitute 'vacancies' . . . under any agreement", the provision is controlling. In the instant case, this same principle should apply, and Article 12 (b) of the Vacation Agreement should supersede Rule 18 (i), having to do with temporary vacancies.

It seems clear from the Vacation Agreement that absences due to vacations were intended to be treated differently than absences due to other causes. As to absences due to vacations, Article 12 (b) specifically provides that such absences are not "vacancies" under any agreement; thus, we have specific language saying that such absences are not vacancies. The Organization is attempting to say that such absences are to be considered as any other vacancy and the position should be filled under rules of the schedule agreement, applicable to bulletining and filling positions. The Carrier insists that to treat absences on vacation as any other vacancy under the schedule agreement is tantamount to deleting the contrary provision from the Vacation Agreement that absences from duty due to vacations are not vacancies under any agreement.

The Carrier asserts that the claim is without merit and should be denied.

OPINION OF BOARD: The essential facts are not in issue. The question before us is whether or not the Claimants, senior extra employes, have the right to displace junior extra employes who have filled, for more than three working days, the positions of operators on vacation. The Carrier, taking the position that this question must be answered in the negative, refused to permit the Claimants to displace the junior extra employes.

The Petitioner maintains that this refusal is in violation of its collective bargaining agreement with the Carrier. More particularly, in support of its position, the Petitioner points to Rule 18, paragraphs (g) and (i), of the Agreement which read as follows:

> "(g) The oldest available extra employe on the seniority district, if competent, shall be used to fill temporary vacancies, but cannot claim extra work in excess of 40 straight time hours in his work week if a junior extra employee who has had less than 40 hours' work in his work week is available."

> "(i) Junior extra employee catching temporary vacancy will hold the same for three (3) working days, after which he may be displaced by senior extra employee, who must make application to the chief dispatcher. This paragraph does not apply to agencies where a transfer of accounts is made by traveling auditor."

It will be noted that Rule 18 (i) sets forth the priority of rights between extra employes based on the principle of seniority. An examination of the paragraphs just quoted makes it apparent that the claims in the present case must be sustained unless some other agreement between the parties militates against that result.

The Carrier contends that Rule 18 (g) and (i) must be read in connection with Article 12 (b) of the Vacation Agreement which reads as follows:

> "(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. 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."

It is urged by the Carrier that Article 12 (b) specifically provides that vacation absences will not constitute 'vacancies' under any agreement and that therefore it is at liberty to fill the positions of vacationing employes without reference to Rule 18 (g) and (i) so long as an effort is made to observe the principle of seniority. The Petitioner insists that this interpretation is narrow and artificial and that the true purpose of Article 12 (b) is to protect the rights of the vacationing employe in his position.

The Petitioner seeks to distinguish some of our prior Awards on the subject (e.g., 5192, 5461 and 5976) on the ground that they did not involve the contract language found in Rule 18 (g) and (i). However, our analysis of those Awards convinces us that they considered substantially, the same question as is now before us and are strong authority for the principle advocated here by the Carrier. While consistency in our awards has much to recommend it, we are not disinclined to modify or reverse our prior holdings where we are satisfied that such a course is warranted. We have, therefore, given careful and independent consideration to the Petitioner's arguments. It may well be, as the Petitioner contends, that in Article 12 (b) the contracting parties really intended solely to protect the rights of the vacationing employe in his position. However, this thought is not conveyed by the paragraph read in its entirety, although it is true that the introductory clauses of Article 12 (b) lend some support to that interpretation. The difficulty with the Petitioner's position is that the use of the phrase, "will not constitute

'vacancies' in their positions under any agreement," is unqualified and definite. The situation sharply illustrates one of the problems confronting negotiators in drafting collective bargaining agreements.

We could sustain the claims only by ignoring the plain terms of Article 12 (b) and reading into them exceptions and explanations that are not there. In the face of the clear and unqualified language that the contracting parties have used in that Article, it would be highly improper for us to read exceptions into it based on outside information or our own conception of what the parties really wished to provide. The Agreement and record before us are not ambiguous and the agreement expressed in Rule 18 (i) is as much an "agreement" within the meaning of Article 12 (b) as any agreement can be. In our opinion, this finding and the prior awards heretofore rendered are not too narrow or technical but are logical and necessary in view of the express language used by the contracting parties in Article 12 (b).

No conflict between the applicable agreements is perceived. The Rules do not deal specifically with the subject of applying seniority to vacation relief. The Vacation Agreement, in its Article 12 (b), makes express provision as to this point, providing that absence from duty because of vacation will not constitute vacancies "under any agreement" but requiring only that "effort will be made to observe the principle of seniority." The Vacation Agreement, by its express terms has defined a vacation absence as not a "vacancy" under any agreement, and to that extent has limited the applicability of seniority and other rules.

In view of the foregoing, it is our opinion and we find that the Carrier has not violated the controlling agreements and the claims must accordingly be dismissed.

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 Carrier did not violate the Agreement as claimed.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.