

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

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

1. Carrier violated the Clerks' Rules Agreement when it withheld Employee J. J. Tworoski, Minneapolis, Minnesota, from a temporary vacancy for which he had made application in accordance with the provisions of Rule 9(g), and assigned a junior employee to fill that temporary vacancy.

2. Carrier shall compensate Employee J. J. Tworoski at the pro rata rate applicable to Position R-14, Perishable Freight Inspector, Minneapolis, Minnesota, for each day that that position was filled by a junior employee.

EMPLOYEES' STATEMENT OF FACTS: Employee J. J. Tworoski is the regularly assigned occupant of Perishable Freight Inspector Position R-16 at St. Paul, Minnesota. His assigned hours are from 11:59 P. M. to 7:59 A. M. Friday through Tuesday with Wednesday and Thursday as rest days.

On June 2, 1956 Employee Tworoski, who was filling a temporary vacancy on Perishable Freight Inspector Position R-23, which he had requested and had been assigned to as provided in Rule 9(g), was notified that the temporary vacancy on Position R-23 would terminate on June 3, 1956.

Employee Tworoski then made request for Perishable Freight Inspector Position R-14, which was temporarily vacant for two weeks due to the regular occupant of that position, Employee Edmiston, taking his vacation.

Although he was the senior qualified employee requesting the vacancy on Position R-14, Carrier refused to assign him to that position and required

to his own position, R-16, on June 3, 1956 he requested that he be permitted to fill that portion of the vacation relief position representing employee Edmiston's vacation, i.e., from June 4 through June 15, 1956. In other words, he made request for a 10-day portion of the vacation relief position which had been bulletined and for which he made no application. This request was, of course, denied, because the position, in its entirety had been assigned to employee Piech but principally because employee Tworoski requested only a certain portion of the vacation relief position. There is no provision requiring the Carrier to break up a permanent bulletined assignment, as vacation relief positions are considered, into parts for the purpose of parceling out a portion of the position in consequence of a request from an employee for only a portion of a position.

While the employees allege employee Tworoski made application for a temporary vacancy on Position R-14, such was not the case because there was no temporary vacancy on Position R-14 as of June 4, 1956; there was a permanent vacation relief assignment beginning June 4, 1956 and ending October 12, 1956 which was assigned to and filled in whole by employee Piech. Employee Tworoski not only made no application for the position but he did not at any time request the position — his request was only for a **portion** of the position.

During the period that employee Piech performed the vacation relief work on Position R-14 from June 4, 1956 to June 15, 1956, claimant Tworoski remained the regularly assigned occupant of and filled Position R-16. The rate of Position R-16 was \$15.504, which was exactly the same rate of Position R-14.

There is no provision which supports the claimant's request that he be allowed to fill only a portion of the bulletined vacation relief assignment. During the period covered by the claim he suffered no loss. There is no basis for this claim and the Carrier respectfully asks that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Vacation periods were scheduled in accordance with Article 4 of the Vacation Agreement.

Carrier contends that it bulletined a regular vacation relief position on January 19, 1956 which position was to relieve on several Perishable Freight Inspector positions. No applications for the position were received. Claimant's vacation which was the first scheduled was assigned to an employee not involved in this dispute. Carrier states that on April 17, 1956 it assigned S. W. Piech, an employee junior to Claimant, to the vacation relief position to fill the assignments of the remaining vacationing employees. The next scheduled vacation relief work was on Position R-14 (June 4 to 15, 1956). On June 3, Claimant requested that he be permitted to fill that position. Claimant's request was denied.

Organization states that the vacated Position R-14 was not part of a vacation relief assignment. It contends that the Position R-14 was a short vacancy due to the incumbent being on vacation for a total of ten (10) working days and that such temporary vacancy should have been assigned to Claimant. Organization relies solely on Rule 9(g) of the current Agreement.

Rule 9 (g) reads:

“(g) New positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled by an employe without bulletining; if filled, the senior qualified employe requesting same will be assigned thereto.”

Carrier relies on Article 12(b) of the Vacation Agreement.

The Vacation Agreement by its terms, has defined a vacation absence as not a vacancy under any Agreement. See also, Award 5192, 5461, 6874.

We are of the opinion that Article 12(b) of the National Vacation Agreement is the controlling Agreement provision. There is no evidence of record alleging a violation of that article.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1962.