Award No. 11235
Docket No. MW-10523

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) That the Carrier violated the effective Rules Agreement and the Vacation Agreement when it refused to permit Section Laborer Marshall Payton to displace Junior Section Laborer E. W. Blankenship from June 12 to June 21, 1957 inclusive, because the latter mentioned employe was on vacation at that time.

(2) That Section Laborer Marshall Payton be allowed pay for the eight workdays lost from June 12 to June 21, 1957.

EMPLOYES' STATEMENT OF FACTS: Section Laborers Ira Dorsett, Marshall Payton and E. W. Blankenship are all employed as such on the same seniority district with seniority in such rank as follows:

NAME	SENIORITY DATE
1. Ira Dorsett	3-17-48
2. Marshall Payton	8-31-48
3. E. W. Blankenship	10- 1-50

The junior employe above-mentioned (E. W. Blankenship) was on vacation from June 10 to June 21, 1957, and, during that period, the senior above-mentioned employe (Ira Dorsett), who had been displaced from his position, requested permission to displace Junior Section Laborer Blankenship. His request was declined by the Section Foreman, but permission was given for him to displace claimant Marshall Payton.

Claimant Payton thereupon requested permission to displace Junior Section Laborer Blankenship but was denied such right until after the expiration of Blankenship's vacation.

Claim was therefore presented for the eight days' pay lost by claimant Payton; the Carrier declining the claim.

A prior attempt has been made by the Organization to require the Carrier to employ unnecessary vacation relief workers. In **Award 5976**, Brotherhood of Maintenance of Way Employes vs. Gulf, Mobile & Ohio Railroad Company, Referee Fred W. Messmore, decided 31st day of October, 1952, the Organization attempted to require the Carrier to fill the vacation vacancy of an Assistant B&B Foreman. In denying the claim, this Board pointed out: —

> "Rule 6 of the 'Vacation Agreement' confers upon the Carrier the right to determine under certain conditions, (and these conditions are contained in the rule and are specific), whether or not the Carrier will fill the position of a vacationing employe under pay while on vacation."

Similar findings of this Board may be found in Awards 3022, 5192, 5461 and 5921.

Although the claim alleges a violation of the effective Rules Agreement and the Vacation Agreement, the Carrier has not heretofore been informed as to what specific Rules Agreement or provisions of the Vacation Agreement are referred to in the allegation. Possibly this information will come out in the Employes' submission to this Board.

The Carrier maintains that the Vacation Agreement specifically provides that vacation vacancies are not vacancies under any agreement, therefore, there was no vacancy during the period Section Laborer Blankenship was on vacation. It logically follows that there was no position on which Section Laborer Payton could displace during such period. The Vacation Agreement has been clearly interpreted to mean that there is no requirement that the Carrier employ vacation relief workers and thus incur additional and unnecsary expense. The representatives of the employes have previously given as specific examples that it was unnecessary to employ relief sectionmen and that the absence from the crew of one or more men on vacation creates no burden on the remaining men.

This claim is an attempt by the Organization to require the Carrier to now employ vacation relief sectionmen and thus incur additional and unnecessary expense.

The claim is contrary to the applicable Agreement and contrary to the position of the employes in previous cases and should be denied.

This claim has been handled in accordance with the provisions of the Railway Labor Act, as amended.

OPINION OF BOARD: This case is before this Board on a joint submission.

The Carrier refused the Claimant permission to displace junior Employe who was on vacation.

The Carrier contends that at the time the Claimant sought to displace the vacationing Employe, there was no Employe junior to the Claimant working.

"Rule 2

SENIORITY

"(d) Seniority rights of laborers as such shall be confined to the gang in which employed, but when any laborer is cut off account

reduction of forces, such laborer may, if he so desires, displace any junior laborer in any other gang on the same seniority district, provided forty-eight (48) hours notice is given the foreman of the gang in which he expects to exercise seniority, and such notice must be given within ten (10) days from date on which he is cut off. Furloughed laborers who do not desire to displace a junior laborer in accordance with the provisions of this rule, must to retain their seniority, comply with paragraph (g), Rule 21, of this agreement."

"Rule 6 of the 'Vacation Agreement' confers upon the Carrier the right to determine under certain conditions, (and these conditions are contained in the rule and are specific), whether or not the Carrier will fill the position of a vacationing employe under pay while on vacation."

"ARTICLE 12

"(a) Except as otherwise provided in this agreement a carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employe were not granted a vacation and was paid in lieu therefor under the provision hereof. . . ."

"(b) As employes 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 employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority."

"Article 6 of the Vacation Agreement provides:

"The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

"Article 10 of the Vacation Agreement provides:

"(a) An employe designated to fill an assignment of another employe on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employe, such employe shall receive the rate of the relief position. If an employe receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employe in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employe will be paid.

"(b) Where work of vacationing employes is distributed among two or more employes, such employes will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.

"(c) No employe shall be paid less than his own normal compensation for the hours of his own assignment because of vacations to other employes."

We cannot agree with the Carrier's contentions in this matter. The Claimant was not seeking to fulfill a temporary vacancy or a relief position.

The Claimant was endeavoring to displace the junior Employe from a permanent position.

We cannot find in any of the provisions of the Vacation Agreement, either expressly or inferentially, that it protects a junior Employe from being displaced by a senior Employe.

Rule 12, supra, states that vacation does not constitute a vacancy, thus we must conclude that the vacationing Employe is entitled to all rights as if he remained at work; if there was no vacancy, then this position was subject to displacement.

The Agreement was violated.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.