Award No. 11446
Docket No. CL-11232

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

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 at Ottumwa, Iowa when it permitted an employe to return to his regular assignment on the rest days of the temporary position to which he was assigned.

2. The Carrier shall now be required to compensate Employe J. F. Damerval for eight (8) hours at the pro rata rate of Yard Clerk Position No. 3 for each of the following days: June 29 and 30, 1958.

EMPLOYES' STATEMENT OF FACTS: Employe R. K. Anderson is regularly assigned to first track Yard Clerk Position No. 12 at Ottumwa, Iowa. His hours of service are from 6 A.M. to 2 P.M. Tuesday through Saturday and his rest days are Sunday and Monday.

Employe D. J. Coleman is regularly assigned to third trick Yard Clerk Position No. 3 at Ottumwa, Iowa. His hours of service are from 10 P.M. to 6 A.M. Friday through Tuesday and his rest days are Wednesday and Thursday.

Employe J. F. Damerval is a furloughed employe in Seniority District No. 32 with a seniority date of December 4, 1955.

Employe R. K. Anderson was assigned a two-week vacation from June 17th through June 30, 1958.

No regularly assigned vacation relief position was established to include the two week vacation of Employe Anderson and the position was filled by the regularly assigned employe on the third trick Yard Clerk Position No. 3 at his request. The vacancy resulting from third trick Yard Clerk Coleman moving to fill Position No. 12 was filled by recalling furloughed Employe J. F. Damerval.

for and filled a temporary vacancy on Delivery Clerk Position No. 112 from 8:00 A. M. to 5:00 P. M. on June 30, 1958.

There is no basis for this claim. There has been no violation of the rules. The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes and made a part of the question here in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: R. K. Anderson was regularly assigned to Position No. 12 as first trick Yard Clerk with hours of service from 6 A. M. to 2 P. M. Tuesday through Saturday with rest days of Sunday and Monday. On Tuesday, June 17, 1958 Anderson started his vacation of ten work days. D. J. Coleman was regularly assigned to Position No. 3 as third trick Yard Clerk with hours of service from 10:00 P. M. to 6:00 A. M. Friday through Tuesday with rest days Wednesday and Thursday. Coleman requested assignment to Position No. 12 during the vacation vacancy. There being no assigned relief position, Coleman was assigned to fill Position No. 12 during the vacation vacancy. Claimant, who was a furloughed employe, was recalled to fill the vacancy in Position No. 3.

Coleman worked Position No. 12 each of the ten work days. He observed the two rest days of that Position, viz., Sunday and Monday, June 22 and 23, 1958. At his request, he returned to his regularly assigned Position No. 3 and worked Sunday and Monday, June 29 and 30, 1958. Coleman replaced Claimant on those days. Claimant requests pay for eight hours at the pro rata rate for June 29 and 30.

The question before this Board is whether Coleman was obliged to observe the two rest days of Position No. 12 which were Sunday and Monday, June 29 and 30. Employes contend that the temporary vacancy of Position No. 12 included the two rest days and that Coleman was obliged to observe them. Carrier contends that Coleman had the right to return to his Position No. 3 on those days.

Petitioner cited several Awards of this Division to support its position that Coleman was not privileged to relinquish the rest days on Position No. 12. We have examined them and find that they are not applicable. Each one of them involve circumstances and conditions quite different from the facts before us.

We are not here concerned with overtime pay. No claim is before us on behalf of Coleman, and we are not permitted to consider whether or not Coleman was properly paid for work on June 29 and 30. We are only concerned with the claim of J. F. Damerval, a furloughed employe, who was recalled to temporarily fill the vacancy on Position No. 3.

Claimant had no tenure on Position No. 3. Coleman had tenure to that position. While it may have been selfish for Coleman to request work on his position after completing the second of five work days on Position No. 12, we find nothing in the Rule prohibiting him from requesting the right to work those two days. Rule 9(h) permits him to give up his temporary assignment at any time. The Rule provides:

> "(h) When an employe is assigned to a temporary vacancy the position formerly held will be considered a temporary vacancy. If, prior

to the expiration of the temporary vacancy, the employe is disqualified or desires to give up such vacancy; or when the temporary vacancy expires, he will return to his former position provided senior employe has not exercised displacement rights thereon, or exercise seniority rights to any position bulletined during the period he occupied the temporary vacancy. All employes affected by his return will do likewise."

Accepting Petitioner's argument that Coleman's assignment to Position No. 12 included rest days of that position, and since June 29 and 30 were rest days of that position, Coleman was within his rights to give up the vacancy which included those days.

We have no right to change, alter or modify the Agreement. If it was the intention of the Petitioner to compel employes who fill temporary vacancies to observe the rest days of those positions, the Agreement should so state. This can be accomplished by proper negotiations in accordance with the provisions of the Railway Labor Act. We cannot assume the role of a Court of Equity and decide issues on the basis of equity. We are required and can only construe the Agreement before us.

For the reasons above stated, we are obliged to conclude that Coleman had a right to request work on his regular assigned Position No. 3 on June 29 and 30, 1958.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.