

Award No. 11544
Docket No. CL-10325

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Clerks' Agreement at the Depot Ticket Office, Houston, Texas, May 27 through May 31, 1957, when it failed to fill Mr. Fred A. Ross' position of Accountant during the time he was relieving Mr. A. E. Smith who was on vacation. Also,

(b) Claim that Fred A. Ross be paid an additional day's pay for each day he worked the Cashier position and was required to perform the work on the Accountant position due to the position not being filled.

EMPLOYEES' STATEMENT OF FACTS: During the period involved Mr. A. E. Smith was the regularly assigned incumbent of Cashier position No. 692.

Mr. Fred A. Ross was the regularly assigned incumbent of Accountant position No. 693.

Mr. Smith was on vacation May 27 through May 31, 1957, and during this period Mr. Ross worked Mr. Smith's position of Cashier.

Mr. Ross' position of Accountant was not filled during the period he worked Mr. Smith's position.

POSITION OF EMPLOYEES: Mr. Fred A. Ross filed this claim on June 14, 1957, as shown by Employees' Exhibit "A".

Mr. W. M. Gentry, Depot Ticket Agent, declined the claim (Employees' Exhibit "B") without stating his reason for doing so.

Division Chairman, Mr. T. G. Brown, appealed the claim on August 2, 1957 to Passenger Trainmaster, Mr. R. N. Walker, as disclosed by Em-

Referee Morse's interpretation of Rule 6 of the Vacation Agreement to blank Ross' job while he was on Smith's vacancy. However, surely Ross, having voluntarily expressed a desire to work Smith's job during Smith's absence, could have no grounds for complaint or claim — **it is noteworthy that Awards 6733 and 7330 provided no remuneration to those participating in the vacation work, but ordered carriers involved to pay those who were alleged to have stood to work the jobs that were blanked.**

And, under this precedent, who would be entitled to payment were it found that Carrier did err in failing to fill Ross' job?

It must be borne in mind that Ticket Agent Gentry posted a notice on May 24 that Ross would work Smith's job May 27 through May 31 and that the senior qualified clerk bidding would be assigned, but that there were no applicants. Had there been one or more who bid for this work, Carrier recognizes that it might subsequently have been penalized had it blanked the job, even had it adjudged said applicant or applicants unqualified, in view of Award 6733. But there were no bidders!

Summarizing, Carrier, believing there was no violation, asks your Board to deny both claim (a) and claim(b), but conceding that Awards 6733 and 7330 do raise some question as to its right to blank this job, vacant by reason of a rearrangement "to fill a vacancy caused by an employe being on vacation", believes that even though you sustain claim (a) you will deny claim (b) for the reason that named claimant has no conceivable basis for a claim.

(Exhibits not reproduced.)

OPINION OF BOARD: From May 27 through May 31, 1957, Claimant filled a vacation vacancy on Cashier Position No. 692 by moving from his regular assignment on Accountant Position No. 693 at his own request. The vacancy on the latter position was bulletined, but no applications were received and the position was blanked. Claimant claims an additional day's pay for each day that he was required to perform some work on the Accountant's Position on the basis that Articles 6 and 10(b) of the Vacation Agreement and Rule 44, Absorbing Overtime, of the General Rules Agreement were violated.

Carrier avers that, although Claimant performed some of the essential duties of the Accountant's job, which was less than 25%, Claimant would have no contractual right to work both positions at the same time, that he received the higher rate of Cashier's position, that he suffered no "hardship" and that the claimed violation of the Absorbing Overtime Rule (44) was introduced for the first time before the Board.

The confronting claim was not initiated by a senior available qualified employe who would have been entitled to fill the vacant Accountant Position had he made application therefor. For that reason, it is not necessary to rule on the question whether it was necessary to fill the position during the period in question. It is noted, however, that Carrier posted a notice on May 24, 1957, that Claimant Ross would fill the vacation vacancy on the Cashier's Position May 27 through May 31, 1957, and that the senior qualified Clerk bidding for the vacancy on the Accountant's Position would be assigned and that there were no applicants.

There is no evidence of record that Claimant was "burdened" by Carrier's failure to employ a vacation relief worker under Article 6, nor did the

Petitioners prove that more than 25% of the work load of the vacationing employe was distributed among fellow employes as provided in Article 10(b). We, therefore, hold that Carrier did not violate the vacation agreement under these circumstances.

Rule 44 is not relevant to the issues raised by the parties during the handling of the dispute on the property and cannot be raised here for the first time.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.