Award No. 11579
Docket No. CL-11665

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

DONORA SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim concerns Margaret Valko, Clerk.

"It is requested that I be paid eight (8) hours at the straight time rate for the following dates: August 25, 26, 27, 28 and 29th, 1958. On these dates a short vacancy existed for the position of Receptionist - PBX Operator which was erroneously filled by using a regularly assigned employe. This is in violation of rules 19-A, 21-C and 26-A of the Clerks Agreement."

EMPLOYES' STATEMENT OF FACTS: Margaret Valko, Clerk was a furloughed employe and was available for the work that was performed by another employe who had a regular assigned job and should not have been used to fill the short vacancy.

The Carrier by their own admission in their answer to the Organization state that the employe that should have filled the short vacancy was filling another position and this means that Margaret Valko was according to the agreement entitled to the work performed by the regular employed employe.

The Organization feels that Rules 19-A, 21-C and 26-A were violated by the Carrier.

The Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective July 16, 1953 and revised October 1, 1957 with the Donora Southern Railroad Company covering the Clerical, Office, Station and Storehouse Employes, a copy of which is on file with the Board and is by reference hereto made a part of these Statement of Facts.

POSITION OF EMPLOYES: That Margaret Valko was entitled to the work that was performed by another employe who had a regular job and should not have filled the short vacancy.

Rule 26-A was violated by the Carrier and this rule reads as follows:

Further, the principle of seniority was followed as required by Article 12 (b) of the National Vacation Agreement. Also, under Article 6 of the National Vacation Agreement, the Carrier did provide a vacation relief worker and that Article expressly provides that " * * * the vacation system shall not be used as a device to make unnecessary jobs for other workers."

For the foregoing reasons, it is respectfully submitted that this claim must be denied.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employes or their duly authorized representatives and made a part of the particular case in dispute.

OPINION OF BOARD: On the dates involved in this claim, the Claimant was furloughed due to reduced operations. There was no extra board maintained at the location in question. The regular incumbent of the position of Receptionist-PBX Operator was on vacation and the senior qualified clerk desiring to fill the position was assigned to the position.

It is the contention of the Claimant that under the seniority provisions of the effective Agreement of July 16, 1953, as revised October 1, 1957, she should have been used to fill the short vacancy in accordance with the Agreement and it should not have been filled by a regular employe who held a regular job. The claim was grounded on the alleged violations of Rules 19 (a), 21 (c) and 27 (a) of the applicable Agreement.

The claim was denied by the Carrier on the basis that the provisions of the National Vacation Agreement applied and, hence, justified the action of the Carrier in the instant matter. Carrier relies on Articles 6 and 12 of the National Vacation Agreement.

Nowhere in the record nor in the Submission does the Petitioner discuss the proposition as to whether or not the National Vacation Agreement applies to the situation presented here.

Article 12 (b) of the National Vacation Agreement reads, as follows:

> "(b) As employes exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their 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." (Emphasis ours.)

In Award No. 9556 (Bernstein) we note the following:

> "Claimant, who had seniority as a Signal Maintainer, held a regular position as an Assistant Signalman as a result of prior reduction in force among Signal Maintainers. Under the Agreement his seniority in the latter group continued unabated. He claims that during the two vacation periods the vacationers' jobs were filled and that he, as the senior furloughed Signal Maintainer, should have been called to fill the positions.

* * *

"1. We agree with the Carrier that the clear language of Article 12 (b) of the Vacation Agreement prevents a vacation from constituting '"vacancies" . . . under any agreement.'

* * *

". . . The seniority rules do not declare when vacancies exist or service is to be performed. They merely describe the seniority rights of furloughed employes to such vacancies and positions if and when they are to be filled.

"It follows that Article 12(b) of the Vacation Agreement is applicable to the situation here and negates the existence of a vacancy which would call into operation the seniority provisions invoked."

The seniority rules of the Agreement merely describe the seniority rights of furloughed employes to positions and vacancies if and where they are to be filled. Article 12 (b) of the Vacation Agreement is applicable to filling absences caused by vacations such as is involved here and negates the existence of a vacancy which call into operation the seniority provisions referred to by the Claimant.

The senior employe has been used to fill the position caused by a vacationing employe. There has been a compliance by the Carrier with the provisions of 12(b) of the National Vacation Agreement.

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 the Agreement has not been 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.