

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 and continues to violate the rules of the Clerks' Agreement at Madison, South Dakota when it uses an "outsider" to fill temporary vacancies at that location in lieu of recalling the furloughed employes.

2. Carrier shall compensate Employee P. J. Elskamp for eight (8) hours at the rate of pay applicable to Position #55, Ticket-Roadmasters Clerk at Madison, S.D. for each of the following dates: July 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 1958.

3. Carrier shall compensate Employee P. J. Elskamp for eight (8) hours at the rate of pay applicable to Position #58, Warehouse Foreman at Madison, S.D., for each of the following dates: August 25, 26, 27, 28, 29, September 1, 2, 3, 4, and 5, 1958.

EMPLOYEES' STATEMENT OF FACTS: The following clerical positions are maintained by the Carrier at Madison, South Dakota:

Pos. No.	Title	Occupant
55	Ticket-Roadmaster Clerk	F. L. Crabbs
56	Cashier	L. H. Palmer
58	Warehouse Foreman	B. E. Schultz

Vacations during the year 1958 were taken as follows:

L. H. Palmer—June 3rd to 23rd, inclusive

F. L. Crabbs—July 7 th 25th, "

B. E. Schultz—August 25th to Sept. 5th, inclusive

position under the schedule agreement. The awards of this Division hold that Article 12 (b) does not conflict with a schedule agreement provision, providing the method of filling short vacancies. Awards 3022, 5192, 5461, 5976."

Further with respect to the employes' contention in this dispute that utilization by the Carrier of a vacation relief worker to provide vacation relief on the two positions in question was in violation of rules of the currently effective Schedule Agreement between the parties dated September 1, 1949, while not particularly relevant to the instant case, we wish to point out to your Board an understanding had with the General Chairman of the Clerks' Organization on this property since April 4, 1955, an understanding which operates in conjunction with Article 12 of the National Vacation Agreement and which continues in existence to the effect that if an employe is hired for the purpose of providing relief during vacation periods, even though he does not perform relief on the position of the employe or employes actually on vacation, but instead, fills the position of one or more other employes who fill positions of employes while absent on vacation, the employe hired is to be considered the vacation relief employe. We firmly believe that such understanding will clearly dispel any semblance of doubt over the fact that both parties have recognized Article 12 (b) of the National Vacation Agreement as being the controlling agreement provision and have agreed thereon.

The Carrier respectfully submits the instant contention and claim to be devoid of merit and requests that it be denied in its entirety.

All data contained herein has been made known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintained three clerical positions at Madison, South Dakota. In the summer of 1958, the clerks were scheduled the following vacation periods:

L. H. Palmer —June 3 to 21 inclusive

F. L. Crabbs —July 7 to 25 inclusive

B. E. Schultz —August 25 to September 5 inclusive

Carrier employed, R. J. Palmer, a school teacher, as a regular relief employe to fill the positions of the above employes during their vacation absence.

Petitioner contends that Claimant who had seniority and was unemployed should have been assigned to fill the vacation absences under Article 12(b) of the National Vacation Agreement which reads:

"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." (Emphasis ours.)

The record shows that Claimant requested and was granted a leave of absence for 60 days effective January 3, 1956; that he requested and was granted a 30-day extension which expired April 3, 1956; that he did not report

for duty on April 3, 1956, nor at any time thereafter. Carrier contends that Claimant had been notified that his seniority rights had terminated because he failed to return to work and was absent without leave. Petitioner contends that Claimant's seniority rights were not terminated because Carrier failed to notify Petitioner of any leave of absence granted to Claimant as required by Rule 23 and that Carrier carried Claimant on the seniority roster up to the time the claim was presented. Carrier replied that Claimant was on the seniority roster in error.

Whether or not Claimant retained his seniority rights is immaterial. His extended leave of absence expired April 3, 1956. He did not report for work. He made no effort to report at any time in the interim. If he retained his seniority by reason of his leave of absence, he was then either still on leave or absent without leave, but unavailable for work. In either case Carrier was not obliged "to observe the principle of seniority" required in Article 12(b) of the National Vacation Agreement. In the absence of an available senior employe, Carrier had the right to employe R. J. Palmer as a regular relief employe.

There is also evidence in the record that R. J. Palmer had been hired as a vacation relief employe in previous years.

On the basis of the record, we conclude that there is no basis for the claim.

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 12th day of July 1963.