

Award No. 12361
Docket No. CL-12131

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4828) that:

(1) Carrier violated the rules of the current Clerks' Agreement when it abolished position of Vacation Relief Clerk in its Local Freight Office at Kansas City, Missouri, without proper advance notice to the incumbent thereof.

(2) Vacation Relief Clerk, C. R. Burkhead shall now be compensated eight (8) hours pro rata pay for May 6, 1958, account deprived of the opportunity to perform service on that date by Carrier's failure to comply with the terms of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Position of Vacation Relief Clerk at the Local Freight Office in Kansas City, Missouri, was advertised on April 14, 1958, and assigned to claimant by bulletin under date of April 25, 1958. Copy of the bulletin advertising this position as well as copy of the assignment notice are attached as Employees' Exhibits Nos. 1 and 2.

One of the positions the Vacation Relief Clerk was assigned to relieve was Job No. 337, which was regularly assigned to Mr. M. J. Stefanick. Mr. Stefanick was scheduled to receive his vacation during the period of April 28 to May 9, 1958, inclusive. Position No. 337, which Stefanick held, is assigned to work Monday through Friday between the hours of 11:30 A. M. and 8:30 P. M.

Claimant Burkhead was assigned to and did fulfill the duties of Position No. 337 during the period of April 28 through May 5, 1958, inclusive, as contemplated in his assignment as Vacation Relief Clerk. Because of a force reduction, however, Mr. V. L. Reardon, a senior employe, in the exercise of his seniority rights, served notice on May 3, 1958 of his desire to displace Mr. Stefanick from Position No. 337, effective on May 6, 1958 at 11:30 A. M.

Mr. Reardon accorded Mr. Stefanick, the regular incumbent of Position No. 337, a copy of his bump, but did not give Vacation Relief Clerk Burkhead copy. The claimant was not given knowledge of the intended displacement until after he had begun work on May 5, 1958.

“. . . In Award No. 687 this Board found that the word 'day' is intended to mean a period of 24 hours computed from the beginning of a previous assignment. . . .”

Also Award 5051, wherein it is stated:

“. . . that a day is to be considered as a twenty-four (24) hour period. In this case, the twenty-four (24) hour period must be computed from 12:05 A. M., . . .”

Now, as to the 48 hours' notice with respect to Claimant Burkhead: It must be remembered that Mr. Burkhead was assigned to a vacation relief job. These vacation relief jobs are set up to cover definite, known vacation vacancies, and when the Burkhead job was established Stefanick was scheduled to be on vacation during the period involved in this claim. Stefanick actually was away on vacation when Reardon was displaced and then bumped Stefanick off of the latter's job. Since vacations are personal and do not go with the job, and since Claimant Burkhead was relieving Stefanick, when Reardon bumped in on Stefanick's job the whole picture changed. Burkhead could no longer relieve Stefanick because Stefanick had lost his job to Reardon. Burkhead could not relieve Reardon, because Reardon was not on vacation. Therefore, the 48 hours' notice which normally would apply to an abolishment, was entirely unnecessary as to the vacation relief job occupied by claimant, because such job had been eliminated by seniority processes, and Agent McGuire's bulletin abolishing the job was more confirmation than anything else that the job was out of the picture. Certainly it cannot be said seriously that this vacation relief assignment could continue beyond the time of Stefanick's displacement by Reardon, because there was no one to relieve.

Apparently Employees believe we should pay Claimant Burkhead a day's pay for May 6, 1958. On that date Reardon worked Stefanick's former job. Claimant had no job or assignment, and therefore there is no basis for determining rate of pay, etc., on which to base this claim. The Carrier was not responsible for what occurred to Claimant Burkhead—Reardon set in motion the chain of events which resulted in Burkhead losing a day's work on May 6th. The Carrier was powerless to prevent Reardon from bumping in, and after Reardon bumped in neither Burkhead or the vacation relief assignment had any status. Reardon's bumping in on Stefanick's job nullified Burkhead's status just as effectively as an abolishment by the Carrier.

Except as expressly admitted herein, the carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

The claim should be denied and the Board is respectfully requested to so find.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant was assigned to the position of Vacation Relief Clerk at Carrier's Local Freight Office in Kansas City, Missouri. One of the positions he was assigned to relieve was Job No. 337, regularly assigned to M. J. Stefanick; hours 11:30 A.M. to 8:30 P.M. Monday through Friday. Stefanick was scheduled to receive his vacation during the period April 28 to May 9, 1958.

Because of a reduction in force V. L. Reardon, in the exercise of his seniority rights, served notice on May 3, 1958, that he would displace the em-

ploye, Stefanick, regularly assigned to Job No. 337, effective May 6, 1958; and, he did so. This displacement, by operation of the Agreement, terminated the vacation vacancy in Job No. 337; and as a consequence, Claimant was in effect displaced.

Carrier, on May 5 at 10:00 A. M., posted a bulletin abolishing Claimant's Vacation Relief Position effective 11:30 A. M., May 7.

Rule 17 (a) of the Agreement provides that "When reducing forces, seniority rights shall govern. . . . Employees in Group 1 and Group 2 whose positions are abolished will be given at least forty-eight (48) hours' bulletin notice thereof."

Petitioner argues that: (1) Rule 17 (a) notices became effective as of 12:00 Noon on the date of posting; (2) Claimant was not given 48 hours' notice; and, (3) Carrier violated the Agreement in not letting Claimant work on May 6 or by paying him for that day.

There is nothing in the Agreement or evidence in the record that supports Petitioner's argument that Rule 17 (a) notices became effective as of 12:00 Noon on the day of posting and not at the actual time of posting. We find, therefore, that the bulletin abolishing Claimant's position satisfied Rule 17 (a). We will deny 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1964.