

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

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

(a) Carrier violated the rules of the current Clerks' Agreement when it failed and refused to properly compensate Mr. R. H. Johnson for his vacation, during the period September 2, through September 15, 1959; and,

(b) Mr. R. H. Johnson shall now be compensated for the difference between \$19.20 per day, which he should have received, and \$17.35 per day, which he did receive while on vacation September 2, through September 15, 1959.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. H. Johnson, regular assigned occupant of General Clerk Position No. 4608, rate \$19.20 per day, Fullerton, California, applied for Relief Position No. 9486 at the San Bernardino Station, rate \$17.35 per day, which was advertised on August 6, 1959. Mr. Johnson was the successful applicant for Relief Position No. 9486, but the Carrier held him on General Clerk Position No. 4608 to and including September 1, 1959, at which time he immediately started his ten (10) days paid vacation.

General Clerk Position No. 4608 is assigned to work Monday through Friday with Saturday and Sunday as assigned rest days and Relief Position No. 9486 is assigned Friday through Tuesday with Wednesday and Thursday as assigned rest days. Clerk Johnson returned from his vacation and reported for his new assignment at San Bernardino, on Friday, September 18, 1959.

Claimant Johnson occupied, as his regular assignment, General Clerk Position No. 4608, rated \$19.20 per day, for a long period of time (several months) and up to and including the day immediately preceding his vacation, but Carrier only allowed him \$17.35 per day for his vacation pay. He did not occupy or perform service on the lower rated position (No. 9486) until after he had completed his vacation.

4608 from August 15 to and including September 1, 1959, a period of eighteen (18) calendar days which included twelve (12) work days and six (6) rest days. No other conclusion is possible under Referee Morse's interpretation of Article 7(a) and the Board is without authority to add to, take from, or otherwise amend that interpretation by award. See Awards Nos. 5422, 6197, 6271, 6325 and others.

Moreover, insofar as concerns Article 7(a) of the December 17, 1941 Vacation Agreement and Referee Morse's interpretation thereof, there is no difference between (1) the claim in the instant dispute which arose out of the temporary retention of the claimant Mr. Johnson on General Clerk Position No. 4608 to which he had been regularly assigned prior to August 15, 1959, and (2) the claim that was denied by Award No. 18 of Special Board of Adjustment No. 305 which arose out of the use of a telegrapher-cashier to temporarily work a position of agent-yardmaster.

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is wholly without support under the agreement rules and should be declined in its entirety.

OPINION OF BOARD: Mr. R. H. Johnson, regularly assigned occupant of General Clerk Position No. 4608 at Fullerton, California, was the successful bidder for advertised Relief Position No. 9486 at San Bernardino, California, to begin on August 14, 1959. In the absence of an available qualified relief employe, Mr. Johnson remained on General Clerk Position No. 4608 until the end of the workday, Tuesday, September 1, 1959. On September 2, 1959, he started his scheduled vacation and on Friday, September 18, 1959, he reported for his Relief Position No. 9486.

Mr. Johnson makes claim for the vacation period from September 2 to September 15 for the difference between the amount he was paid (\$17.35 per day), the rate for Relief Position No. 9486, and the amount he would have received on Position No. 4608 (\$19.20 per day).

He takes the position that Carrier's failure to pay him the rate of Position No. 4608 was a violation of Article 7 (a) of the Vacation Agreement of 1942 and the interpretation placed upon it. He maintains that since he had been working on Position No. 4608 for more than 20 days, under the interpretation, he was a regular employe on that Position and should have been paid its rate while on vacation.

Carrier contends that as of August 14, Claimant's regular assignment was Relief Position No. 9486; thereafter Position No. 4608, which he worked until his vacation began on September 2, became his temporary assignment. Since he did not work on this temporary assignment for 20 days or more, it asserts that Claimant was properly compensated for his vacation on Position No. 9486 in accordance with Article 7 (a) and the interpretation.

The question to be determined in this dispute is whether Claimant Johnson was a regular or temporary employe on Position No. 4608 after his successful bid for Position No. 9486.

Under Article 7 (a) and the interpretation, we find that an employe holds a regular assignment when he actually takes over the duties of the new position. Claimant Johnson did not physically assume the responsibilities of Position No. 9486 until September 18. Position No. 4608 continued to be his regular assignment through September 1 when Carrier released him for his scheduled vacation. September 1 cannot be considered the beginning of his new assignment.

Carrier submits that under the Letter of Understanding of December 9, 1942, Claimant, a temporary employe on Position No. 4608, was withheld for only 19 days and upon his release to his new regular assignment was properly paid the rate of that Position No. 9486. Had he remained on Position No. 4608 for more than 20 days, Carrier states that under the Letter, he would have been entitled to the vacation pay at the rate of that position. Even if Claimant were released to take over his new position on September 1 as Carrier alleges, he could not have done so until September 4 because that date was the first workday after the rest day of the position. September 4 would extend the period Claimant was withheld from his new position by Carrier to more than 20 days. Therefore, we hold that under the Letter of Understanding and under Article 7 (a) and its interpretation, the claim has merit and the request for the difference in compensation is allowed.

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 was violated.

AWARD

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.