Award No. 14584
Docket No. CL-14963

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5623) that:

1. Carrier violated the Clerks' Rules Agreement when it called an employe, while on vacation, to return to work to fill a temporary vacancy in lieu of calling an available furloughed employe.

2. Carrier shall now be required to compensate Employe J. J. Tworoski, Jr. at the pro rata rate of Perishable Freight Inspector Position No. 18 for eight (8) hours for each of the following days:

August 20, 21, 22, 23 and 24, 1963.

EMPLOYES' STATEMENT OF FACTS: Employe A. Larson is the regularly assigned occupant of PFI Position No. 18 at Minneapolis, Minn. His hours of service are from 8 A. M. to 5 P. M. Tuesday through Saturday, with rest days on Sunday and Monday.

Employe Larson was on vacation August 20 to 24 inclusive, and this period was not included in a vacation relief assignment.

Employe D. Glass is the regularly assigned occupant of PFI Position No. 15 at St. Paul. His hours of service are from 3 P. M. to 11 P. M. Wednesday through Sunday, with rest days on Monday and Tuesday.

Employe Glass was on vacation July 31 to August 18, 1963 and his first assigned work day following this vacation period was Wednesday, August 21, 1963.

Employe J. J. Tworoski, Jr. was called and filled PFI Position No. 18 on the Saturday, August 18th, and Sunday, August 19th, rest days of Position No. 18. However, apparently no arrangements were made for vacation relief on

There is attached hereto as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of January 14, 1964 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. Gilligan under date of May 4, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: Employe Larson, regularly assigned occupant of PFI Position No. 18 at Minneapolis, Minnesota, (8:00 A. M. to 5:00 P. M., Tuesday through Saturday), was on vacation August 20 to 24. This period was not included in a vacation relief assignment.

Employe Glass is regularly assigned as occupant PFI Position No. 15 at St. Paul, (3:00 P. M. to 11:00 P. M., Wednesday through Sunday), and was on vacation July 31 to August 18, 1963 and his first assigned workday following thereafter was Wednesday, August 21, 1963.

Employe Tworoski was called and filled PFI Position No. 18 on the Saturday, August 18, and Sunday, August 19, rest days of said position.

Apparently no arrangements were made for vacation relief on Position No. 18 on the August 20-24 workdays. When no one reported for work on Position No. 18 on Tuesday, August 20, 1963, Glass was called by Ice House Laborer McDowell, to fill Position No. 18 and thereafter requested and was granted the right to fill Position No. 18 for the duration of the vacation period of Larson.

Tworoski urges that he should have been called to fill the vacancy and is therefore claiming five days compensation at the pro rata rate for eight hours each day.

For the purposes of argument, the parties seem to have divided the claim, first as to August 20 and then as to August 21-24.

Glass was observing the rest day of his regularly assigned position on August 20, and it is readily apparent that he should not have been called to fill the vacancy. However, here the Carrier argues, that the Ice House Laborer, who called Glass, was acting without authority from the Carrier and that the Carrier should not be held to have any agency relationship with the laborer.

We do not hold that the laborer acted under the supervision of the Carrier, or that there is any agency principle involved. What we do hold is that the Carrier is responsible for assigning the proper employe to the position, and they either knew or should have known of the vacancy, and who was the proper employe to be called. The basic fact of the matter is, that Carrier was guilty of nonfeasance in alowing the position to be unprotected, thereby giving rise to the incident involved in the claim.

If the Carrier had properly assigned Tworoski to protect the position on August 20, he would have been able to continue for the balance of the assignment. We are of the opinion that when Glass would have returned from his vacation on August 21, he would have been unable to exercise his seniority over Tworoski for the remaining four days.

This is held, because this was an unbulletined temporary vacancy which was created as of August 20. If Tworoski had been properly called on August 20, there would have been no vacancy existing August 21. Therefore, Glass would not have been able to come back from his vacation and bump Tworoski, who would have been filling an unbulletined temporary vacancy.

We are, therefore, of the opinion that the claim should be sustained for the five days, at eight hours each day at the pro rata rate. However, we also believe that there should be deducted therefrom whatever sum Claimant earned during the period covered by 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 the Agreement was violated.

AWARD

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1966.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.