

Award No. 14607
Docket No. CL-14236

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 5379) that:

1. Carrier violated the Clerks' Rules Agreement when it failed to recognize the senior employee's rights to a temporary vacancy.

2. Carrier shall now be required to compensate Employee Charles Fedak for eight (8) hours at the straight time rate of Route Clerk Position No. 106 for each of the following days:

April 30, May 1, 2, 3, 4, 7, 8, 9, 10 and 11, 1962.

EMPLOYEES' STATEMENT OF FACTS: Employee Charles Fedak, who has a clerical seniority date of December 1, 1936 and a non-clerical date of September 11, 1936 in Seniority District No. 31, is the regularly assigned occupant of Check Clerk Position No. 9012 at Galewood, Illinois Candy House. Check Clerk Position No. 9012 is assigned from 8:00 A. M. to 5:00 P. M., Monday through Friday, with Saturday and Sunday rest days.

Employee John Shorter, who has a clerical seniority date of June 15, 1926 and a non-clerical date of October 26, 1925 in Seniority District No. 31 is the regularly assigned occupant of Route Clerk Position No. 106 at Galewood.

Employee Jerry LaGrano, who has a clerical seniority date of March 6, 1942 and a non-clerical seniority date of January 17, 1934 in Seniority District No. 31, is the regularly assigned occupant of a stower position at Galewood, Illinois.

When the vacation schedules for 1962 were being prepared, Employee John Shorter requested and was assigned a vacation period beginning August 13, 1962.

Under date of April 10, 1962, Mr. F. H. Joynt, Agent, issued Bulletin No. 5 advertising a vacation relief position for the period July 23 to August 31, 1962. Copy of Bulletin No. 5 is submitted as Employees' Exhibit A. On April 18, 1962, Bulletin No. 6 was issued awarding that position to Employee G. LaGrano. Copy of Bulletin No. 6 is submitted as Employees' Exhibit B.

The vacation vacancy on employee Shorter's position during the period April 30 through May 11, 1962 was filled by employee LaGrano who had been assigned by bulletin (see Carrier's Exhibit B) to the bulletined vacation relief position which was established for the primary purpose of providing vacation relief on, among others, employee Shorter's position.

Claimant Fedak is the regularly assigned occupant of a check clerk position which is assigned Monday through Friday with Saturday and Sunday rest days and with a rate of pay of \$20.216 per day.

If claimant Fedak wished to provide vacation relief on employee Shorter's position, as it is now contended, he had the right to make application for the vacation relief position which was established for that specific purpose, just as did employee LaGrano, however, he did not do so as will be evidenced by Bulletin No. 6 (Carrier's Exhibit B) which awarded said vacation relief position to the senior qualified applicant therefore, viz., employee LaGrano, and which specifically indicates that there were no other applicants.

There are attached hereto as Carrier's Exhibits copies of the following letters:

Letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. H. V. Gilligan, General Chairman, under date of October 1, 1962 (Carrier's Exhibit D).

Letter written by Mr. Amour to Mr. Gilligan under date of October 31, 1962 (Carrier's Exhibit E).

Letter written by Mr. Amour to Mr. Gilligan under date of March 22, 1963 (Carrier's Exhibit F).

Letter written by Mr. Amour to Mr. Gilligan under date of April 4, 1963 (Carrier's Exhibit G).

(Exhibits not reproduced.)

OPINION OF BOARD: On April 10, 1962, Carrier issued Bulletin No. 5 directed to employees in Seniority District No. 31 advising them that they may apply, in writing, for Office Vacation Relief Clerk for the positions of J. Shorter and R. Emerick to be effective from July 23 to August 31, 1962. Only employee, G. LaGrano applied and the vacation vacancy was awarded to him on April 18, 1962. Claimant, who has more seniority than LaGrano, filed no application.

Shortly thereafter, J. Shorter was called for jury duty. He wrote Carrier on April 24, 1962, requesting that he be allowed two weeks of his vacation from April 30 to May 11, 1962, to coincide with the two weeks he was to be on jury duty instead of the two weeks previously scheduled from August 13 through August 24, 1962. Carrier granted the request and assigned LaGrano to fill that vacancy.

The issue in dispute is whether the change in Shorter's vacation schedule created a temporary vacancy under Rule 9(g) or a vacation under Article 12(b) of the National Vacation Agreement. If it is the former, Claimant should have been assigned; if the latter Carrier had the right to assign LaGrano.

Petitioner argues that when Carrier issued Bulletin No. 5 no immediate vacancy existed. That vacancy was to become effective July 23, 1962 and Carrier only assumed that it would need an employee to fill that vacancy. Thus, Carrier also had to assume that there would be no change in the conditions of that vacancy. But there was a change in conditions. Bulletin No. 5 no longer applied because "there was no longer 30 or more calendar days of vacation relief to be performed in the period covered by the bulletin." Bulletin No. 5 was void. It is Petitioner's position that there was no vacation vacancy between April 30 and May 11, 1962. It was, rather, a temporary vacancy covered in Rule 9(g).

LaGrano relieved Shorter during the latter's vacation. The fact that Shorter was also on jury duty during the same period and received compensation for that service does not alter the situation. Shorter specifically requested and the Carrier designated that time as Shorter's vacation.

There is no allegation in the record, and Petitioner did not contend on the property, that the Carrier had no right to change Shorter's vacation schedule. Carrier did not unilaterally do so. It was changed by mutual agreement.

Article 12(b) specifically provides that a vacation absence is not a vacancy. Petitioner nowhere charges that the Carrier violated that Article. Article 12(b) and not Rule 9(g) is controlling. Since LaGrano filled a vacation vacancy, and since there is no claim that Article 12(b) of the National Vacation Agreement was violated, there is no merit to 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 29th day of June 1966.

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