Award No. 15181
Docket No. TE-13868

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that Mr. G. T. Smith, relief schedule Lock Haven, be allowed an eight (8) hour prorata day at the Lock Haven rate on December 7, 8, 9, 12, 13, 14, 15 and 16, 1960, account not being allowed to move up on first trick Lock Haven during a vacation vacancy, and Operator R. L. Snyder being incorrectly used on a Regulation 5-C-1 move up while not holding rights at Lock Haven.

EMPLOYES' STATEMENT OF FACTS: Lock Haven, Pennsylvania, is located on Carrier's Harrisburg-Buffalo main line district, 117 miles north of Harrisburg and 195 miles south of Buffalo. Carrier maintains a three-shift block operator office, around-the-clock, seven days per week. Prior to the claim date, Claimant Smith was the regularly assigned relief operator scheduled to work as follows:

1st shift	7 AM– 3 PM	Saturday
1st shift	7 AM– 3 PM	Sunday
2nd shift	3 PM–11 PM	Monday
2nd shift	3 PM–11 PM	Tuesday
3rd shift	11 PM– 7 AM	Wednesday
Rest Day		Thursday
Rest Day		Friday

Each of the four block operators, assigned to man the office, work five days per week with two rest days. All positions and employes at Lock Haven Block Office are covered by the Telegraphers' Agreement currently in effect between the parties and by reference is hereby made a part of this submission.

Block Operator V. A. Peck, the regularly assigned first shift at Lock Haven, departed on vacation December 5, 1960, which extended from that date to December 16, 1960. Claimant Smith requested of the Supervising Operator earlier that he be permitted to move up on Peck's assignment pursuant to Regulation 5-C-1 (a) providing:

been assigned to work the first trick vacation vacancy instead of R. L. Snyder.

In the instant case, had R. L. Snyder not been assigned to the vacation vacancy he would have displaced Claimant from his position on Wednesday, December 7, 1960, instead of on Saturday, December 17, 1960.

Management rather than have R. L. Snyder displace Claimant on December 7, 1960, and then assign him to the vacation vacancy on December 8, 1960, elected not to disturb Claimant from his assignment with R. L. Snyder completed filling the vacation vacancy. Had R. L. Snyder been allowed to displace Claimant on December 7, 1960, an extra Group 2 employe would have been entitled to fill the vacation vacancy on December 7, 1960, in the absence of a written request from Claimant.

Claimant made no written application for work in question as provided in Local Agreement dated August 30, 1957, and he lost no time or money during period in question. There is no provision in the Schedule Agreement providing for payment claimed."

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether, under the applicable Agreements, Claimant had any right to be used to fill the first trick vacation vacancy of Block Operator at Lock Haven and whether Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute and will not be repeated, as the Joint Submission of the parties contains a Joint Statement of Agreed Upon Facts, set forth above.

The issue in the instant case is whether an employe who has properly announced his intentions to exercise a displacement right (under Regulations 2-N-1(a) and 2-O-1) but has not assumed or physically occupied the claimed position, is to be considered regularly assigned to the office as contemplated by the parties, within the meaning of Regulation 5-C-1.

Carrier argues that a vacation vacancy was involved and 5-C-1 did not apply, as such vacancy was filled by observing the principles of seniority in accordance with Article 12(b) of the Vacation Agreement; that if Regulation 5-C-1 did apply, Claimant failed to exercise his right to move up on the position in question by not making the required written request as set forth in the Local Agreement of August 30, 1957, under Item 5, which provides:

"Employes desiring consideration under Regulation 5-C-1 must make their requests in writing for each assignment desired, as they occur. Requests will be made to the Supervising Operator."

The Employes rely upon Award 13459, which sustained the Employes' position, involving a similar issue between these same parties; that although Item 5 of the Local Agreement, dated August 30, 1957, requires a written request for the vacancy, Claimant had called the Supervising Operator to inquire about moving to the vacation vacancy, but was informed that Snyder

had intended to take that position as soon as he posted for it, and Claimant would not stand for it; therefore, such written request would have been futile, or a useless gesture, under the circumstances.

As to the first argument of the Carrier that a vacation vacancy was involved and Regulation 5-C-1 did not apply to the filling of vacation vacancies, but rather Article 12(b) of the Vacation Agreement, we find that this issue was not raised during the handling of the claim on the property, and will not be considered or weighed, as it appears for the first time in Carrier's submission to the Board.

From the facts of the Record, we find that the claim must be denied as Claimant has not complied with Item 5 of the Local Agreement by submitting a request for the vacancy in writing. Carrier has never denied that Claimant had a right under Regulation 5-C-1 to move up to this vacancy, provided he so requested in writing.

The language of the Local Agreement is clear and unambiguous. If Claimant desired the position in question he should have complied with this Rule and filed a written request, instead of merely calling the Supervising Operator to inquire about the position.

Since Claimant did not properly exercise his rights, the Claimant was not aggrieved by Snyder filling the first trick vacation vacancy; therefore, we find that Award 13459, relied upon by the Petitioner, is distinguishable from the instant case in that Item 5 of the Local Agreement was not in issue and Regulations 2-N-1(a) and 2-O-1 were not considered relevant in Award 13459 to sustain the findings. Item 5 of the Local Agreement and Regulations 2-N-1(a) and 2-O-1 are, in the instant case, relevant as a defense against the present claim. This claim, therefore, will be denied.

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 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 20th day of January 1967.

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