

Award No. 15609
Docket No. CL-14855

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5532) that:

(a) The Carrier violated the seniority provisions of the Agreements between the parties when it declined to permit D. W. Childers to displace W. R. Dye, and;

(b) The Carrier shall compensate D. W. Childers for compensation lost as a result of such violation for July 26, 27, 30, 31 and August 1, 2, 3, 6, 7 and 8, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Carrier hired claimant D. W. Childers effective June 3, 1963, for the position of Vacation Relief Clerk VRCLK-2, Car Department. It hired W. Ronald Dye effective June 17, 1963, to fill a temporary vacancy in position of Messenger, Mechanical Department, during the vacation of the regular Messenger for the period June 17 to 28, 1963. Both men were hired because the bulletins advertising the positions received no bids from employees holding seniority.

Subsequent to the above dates and facts the following occurred in chronological order:

- (1) Dye was assigned regular Relief Clerk position RCLK-3, Car Department, effective June 25, 1963, as shown in the Assignment Bulletin, but did not assume the duties of the position until he had completed the relief of the Messenger June 29.
- (2) The position held by Claimant Childers was abolished effective July 26, 1963, because employee H. M. Crane who had been assigned vacation July 28 through August 8 had exercised seniority displacement rights to a position in another department, namely, Audit. Crane therefore did not take his vacation in the Car Department which left two weeks of vacation relief blank in the Car Department schedule, the reason for abolishing the position. See the Car Department vacation schedule attached as Employees' Exhibit No. 1.

tion agreement but that they may be changed in negotiations between duly authorized representatives of the parties."

See also opinion of Referee Edward F. Carter in Award No. 2340, Docket CL-2430, a dispute between these same parties.

The attached Exhibits 11 to 16 will show the case has been handled on the property in conference and correspondence between the parties as required by the Railway Labor Act and their Agreement and a dispute exists by virtue of denial of claim by the highest Carrier officer designated to handle such matters.

Therefore, the Employees submit the dispute herewith to Third Division, National Railroad Adjustment Board, for consideration and Award.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant D. W. Childers was employed on June 3, 1963 to provide vacation relief for clerks in the Mechanical Department, account no bids received from employees holding seniority. During the period July 26 through August 8, 1963, no Mechanical Department clerks took vacation, and the vacation relief job was abolished.

On August 9, 1963, the relief assignment was re-established and claimant Childers was again assigned account no bids received from employees holding seniority.

On June 17, 1963, W. R. Dye was hired to provide two weeks' vacation relief for a Mechanical Department messenger account no bids received from employees holding seniority.

On June 25, 1963 Dye was assigned to regular Relief Clerk position in the Car Department, but did not assume duties of the position until he had completed vacation relief for the messenger on June 29, 1963.

When Childers' vacation relief assignment was abolished on July 26, 1963, claimant Childers sought to displace Dye on the regular Relief Job. His request was denied on the basis that he had not yet established a seniority date.

Childers was assigned to vacation relief the second time on August 9, and after working a total of more than sixty days on vacation relief, his seniority was established, and he was given a seniority date of June 3, 1963, the first day he performed vacation relief.

This claim is premised on a contention that Childers should have been granted a seniority date immediately upon entering vacation relief service, which would have permitted him to displace Dye on July 26, 1963.

OPINION OF BOARD: Claimant Childers was, on June 25, 1963 the incumbent of Vacation Relief Clerk position VRCLK-2. He had been hired June 3, 1963.

W. R. Dye, who had been hired June 17 to provide two weeks' vacation relief for a Mechanical Department Messenger, was assigned to a regular relief clerk position in the Car Department which he assumed June 29, 1963.

Notified that his own position was being abolished, Claimant Childers attempted to displace Dye and his request was denied by Carrier on the basis he had not yet established a seniority date. Carrier based its opinion on Article 12 (c) of the Vacation Agreement, reading:

"A person other than a regularly assigned relief employee temporarily hired for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year. . . ."

The position held by Claimant Childers was a regular assigned position encompassing and anticipating an assignment in excess of 30 days—from May 27, 1963 to November 4, 1963.

Dye, on the other hand was a vacation relief worker hired to fill a position for 2 weeks.

Carrier's reliance on Article 12 (c) avails it nothing here in the light of the Memorandum of Agreement by these parties jointly interpreting Article 12 (c) to mean that:

"employees will establish seniority when assigned to positions or vacancies which have been advertised by bulletin as required by Rules 6, 9 and 10. Stated conversely, employees assigned to fill positions or vacancies which are not required to be advertised by bulletin (Rule 8) will not establish seniority."

The vacation relief position held by Childers was bulletined, and under the jointly agreed upon interpretation reached by these parties dated July 8, 1938 Claimant Childers was not subjected to the 60 days' service requirement of Article 12 (c); he was senior to Dye and was entitled to displace him.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1967.

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