Award No. 15885
Docket No. CL-15022

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5542) that:

(a) The Southern Pacific Company violated the Agreement between the parties at Portland, Oregon, on Saturday, November 18, 1961, when it failed to call Mrs. Carrie Wuertley to Position No. 653, Punch and Verifier Operator; and,

(b) The Southern Pacific Company shall now be required to allow Mrs. Carrie Wuertley eight (8) hours' additional compensation at the time and one-half rate of Position No. 653 on November 18, 1961.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company, (Pacific Lines) (hereinafter referred to as the Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

Mr. R. E. Snyder, incumbent of Position No. 625 MP & C Timekeeper, hours 8:00 A. M. to 4:30 P. M., rest days Saturday and Sunday, was absent from his position from November 11 through 19 account vacation.

Absence of a qualified and available unassigned employe Position 625 was filled under the provisions of Rule 34(c) by Mr. K. C. Shauger, incumbent of Position No. 653, Punch and Verifier Operator, hours 8:00 A. M. to 4:30 P. M., rest days Saturday and Sunday.

Mrs. Carrie Wuertley, an unassigned employe (hereinafter referred to as the Claimant), was called to the vacancy on Position 653 under the terms of Rule 34(b).

Punch and Verifier Operator, for date of November 18, 1961 . . ." based on the contention that claimant should have been called for service on Position No. 653, that date. After discussion in conference February 19, 1962, Carrier's Division Superintendent advised Petitioner's Division Chairman by letter dated February 23, 1962 (Carrier's Exhibit B) that the claim was declined.

By letter dated April 10, 1962 (Carrier's Exhibit C), Petitioner's General Chairman appealed that claim to Carrier's Assistant Manager of Personnel and copy of the latter's letter of November 5, 1963, denying the claim is attached as Carrier's Exhibit D.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to this dispute may be summarized as follows: A went on vacation. There being no qualified unassigned employe available to fill A's vacant position, it was filled by B, the senior assigned employe who applied to fill it. B's vacant position was then filled by C, the senior qualified unassigned employe.

A's vacation was from Monday through Friday. Since his rest days were Saturday and Sunday, A was not scheduled to return to work until the following Monday.

On the Saturday after A's 5-day vacation period had run, it became necessary for someone to work B's normal position. Since the rest days for B's normal position were also Saturday and Sunday, C was not working B's normal position that day. The Carrier called B — not C — to work B's normal position that Saturday. The Employes contend that C — not B — should have been called to work B's normal position that Saturday.

The Employes contend that B had to remain available to protect A's position the Saturday and Sunday after A's vacation had expired. This contention is based, first, upon the provisions of Rule 34(c), under which rule B filled A's position:

> "(c) If a qualified unassigned employe is not available, position will be filled by the senior assigned employe who makes written application therefor and is qualified for such vacancy, and when assigned shall take all of the conditions of the position; if a qualified unassigned employe thereafter becomes available he may not displace the regular employe filling the temporary vacancy unless he is senior to such regular employe."

The Employes rely in particular upon that portion of the above rule that provides:

> ". . . and when assigned shall take all of the conditions of the position . . ."

The Employes point out that, by letter agreement of June 6, 1952, the Carrier and the Employes agreed as follows:

> "An employe covered by the Clerks' Agreement who is scheduled for and is granted a vacation immediately following rest days of his position shall not be required, but shall be permitted, if available, to work the rest days of his position preceding his vacation if the

position is required to be worked on such days off and there are no qualified unassigned employes available to work the position. **He shall not be considered available to work on** the rest days of his position occurring during his vacation or **the rest days of his position immediately following the expiration of his vacation.**" (Emphasis ours.)

The Employes argue that, since A could not have worked his normal position the Saturday in question had it been necessary to work it, B was burdened by this "condition" of A's position and had to remain available to work it. They also argue that only B could be deemed the "regular employe" of A's position under the affirmative provision of Rule 20(e):

"(e) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; **in all other cases by the regular employe.**" (Emphasis ours.)

They argue, in turn, that, if on the Saturday in question, B was the "regular employe" of A's position, then C was the "regular employe" of B's normal position and should have been called to work the position that Saturday.

The Board agrees with the Employes' interpretation of the various rules of the agreement and the letter agreement of June 6, 1952, and will sustain the claim.

It is easy for the Board to understand how the Carrier could have taken the position it did. The rules are not free of ambiguity, and this matter is confused somewhat by an additional provision added to Rule 34(c) by agreement of the parties made on September 26, 1951 (effective October 16, 1951) and then later removed by an agreement made on June 4, 1952 (effective June 16, 1952). This provision was as follows:

"3. A regular assigned employe filling a position under the provisions of this rule on the last work day of the work week of the position he is filling, when leaving the position will be required to take the rest days of that position before returning to his regular assignment, displace under the provisions of the preceding paragraph, or make application for another vacancy under this rule."

This abandoned provision, when in effect, would seem to have specifically governed the situation at hand, and, under accepted principles of contract interpretation, the abandonment of such provision in a later writing of Rule 34 must be assumed to have been done for a purpose. See Awards No. 3813 (Douglas) and 11331 (Coburn).

The June 4, 1952 removal of the provision added in 1951 to Rule 34(c), unfortunately, was an ambiguous act itself. The 1951 provision covered three separate situations involving employes such as B: their returning to their regular assignments, their displacing under the provisions of Note 2 to Rule 34(c), and their applying for other vacancies under Rule 34. And, on June 6, 1952 — only two days after the parties agreed to remove this three-situation provision — the parties entered into their agreement providing that employes such as A are not available to work the rest days of their position immediately

following their vacation. All things considered, this Board cannot conclude that the June 4, 1952 removal of the 1951 provision was intended by the parties to establish the opposite of such provision.

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 a violation of the Agreement occurred.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1967.

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