

Award No. 15941

Docket No. TE-14760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania-Reading Seashore Lines, that:

1. CTS-449's submitted by Mr. J. J. Johnstone making claim for September 14 to September 18, 1962, account not being notified of vacancy created on second trick at Vernon Tower due to operator on second trick moving to another trick at same tower are payable. Article 6 (c) applicable.

2. Claim for J. J. Johnstone for day's pay account CTS-449's dated September 21 to 25, inclusive; September 28, 29 and 30, 1962, as per Article 6 (c), not being notified of vacancy on second trick at Vernon Tower and denied him his right in the tower.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. J. J. Johnstone, was the regularly assigned relief block operator at Vernon Tower, West Haddonfield, New Jersey, assigned to work the first shift block operator's position on Mondays and Tuesdays, second shift Wednesdays and Thursdays, and third shift Fridays, with Saturdays and Sundays as rest days.

On Wednesday, September 12, 1962, Mr. G. W. Burns, the regular incumbent of the first shift position, departed on a three weeks vacation. Article VI, paragraph (c) of the Agreement between the parties (by reference hereby made a part of this submission), provides:

"In an office where more than one shift is worked, when a temporary vacancy known to be of more than five (5) days and less than sixty (60) days as to agency and assistant agency positions, and more than five (5) days and less than thirty (30) days as to other positions, the employees in that office will be notified thereof and if qualified will be permitted if they so desire to advance to preferred tricks according to their seniority standing. The trick or tricks left vacant will be filled by extra list employees. For the

The District Chairman rejected the General Manager's decision and turned the case over to his General Chairman. In his letter of December 28, 1962, the General Chairman listed a claim in substantially the same form as that outlined at the beginning of this Submission to the Carrier's General Manager. The claim was discussed on February 28, 1963, and on March 29, 1963, it was denied by the General Manager. A copy of the General Manager's letter of March 29, 1963, is attached as Carrier's Exhibit B.

Therefore, so far as the Carrier is able to anticipate the basis of the claim, the questions to be decided by your Board are whether the Claimant had a demand right under Article VI (c) of the Schedule Agreement, to move up to the second trick operator position at Vernon Tower on September 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29 and 30, 1962, and whether Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to his involvement in painting his own residence during his off duty hours and thereby needing a maximum amount of daylight hours, Claimant Johnstone declined the opportunity to advance to Burns' position, same being temporarily vacant by reason of Burns having gone on vacation. Clark accepted the assignment and Carrier filled the temporary vacancy left in Clark's regular position by an extra employee without giving Claimant notice of the temporary vacancy in Clark's position.

Organization contends that Carrier violated Article VI, paragraph (c) of the Agreement, which paragraph provides:

"In an office where more than one shift is worked, when a temporary vacancy known to be of more than five (5) days and less than sixty (60) days as to agency and assistant agency positions, and more than five (5) days and less than thirty (30) days as to other positions, the employees in that office will be notified thereof and if qualified will be permitted if they so desire to advance to preferred tricks according to their seniority standing. The trick or tricks left vacant will be filled by extra list employees. . . ." (Emphasis ours.)

A perusal of Article VI, paragraph (c), makes it manifestly clear that the parties intended the employees on the schedule would have an opportunity at each position or trick created by a temporary vacancy. The rule begins in the singular, i.e., "a temporary vacancy", and contemplates an advance of qualified personnel "to preferred tricks", same being plural. Thereafter, Carrier is permitted to fill any vacant "trick or tricks" with an extra employee.

Carrier alleges a practice on the property which embraced its interpretation. However, its evidence of same is not convincing, especially when the clear import of the language in Article VI, paragraph (c), is considered therewith.

Claimant was entitled to notice of the temporary vacancy in Clark's regular trick. Further, there was nothing in Claimant's rejection of the first vacancy which could reasonably be construed as a waiver to this right.

Clearly, the Carrier violated the Agreement. However, it contends for the first time in its submission that the claim, if sustained, should be for the difference between what Claimant would have received and what the Clark vacancy would have paid him, i.e., 93 cents. This position cannot be considered after the claim is negotiated on the property and filed with this Board. Circular No. 1; Award 12072 (Dolnick).

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.