Award No. 16804
Docket No. CL-16688

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

CENTRAL VERMONT RAILWAY, INC.

STATEMENT OF CLAIM:

(1) The Carrier violated the Clerks' Agreement and the National Vacation Agreement when it failed to properly compensate Mrs. B. K. Sheehan for vacation pay from April 18, 1966 to May 4, 1966, inclusive.

(2) Carrier shall now be required to allow Mrs. B. K. Sheehan the difference between $22.3872 per day and $21.4464 per day or $.9408 per day for April 18, 1966 to May 4, 1966, inclusive.

JOINT STATEMENT OF FACTS: The Claimant in this case, Mrs. B. K. Sheehan, incumbent of a regular position, rate $21.4464 per day, was assigned a continuous vacation from April 7 to May 4, 1966, inclusive. On April 18, 1966, and while on vacation, Mrs. Sheehan bid in and was awarded position of Secretary, Engineering Office, St. Albans, Vermont, rate $22.3872 per day, to be effective 8:00 A. M. that day, (Exhibit A). Upon her return from vacation on May 5, 1966, Mrs. Sheehan took over the duties of her new assignment and has continued to fill that assignment. During the period April 18 to May 4, 1966, the position of Secretary was filled by a relief employe who was compensated at the $22.3872 rate. For the vacation period from April 7 to May 4, 1966, Mrs. Sheehan was allowed vacation pay based on the rate of her former position, $21.4464 per day, which she occupied at time her vacation started and claim for the rate of her newly assigned position for that part of her vacation, April 18 to May 4, 1966, at the higher rate of her Secretary position was filed on May 11, 1966 (Exhibit B). The claim was progressed up to and including the highest officer of the Carrier to whom appeals may be made, who denied the claim. (Exhibits C to I inclusive.)

(Exhibits not reproduced.)

OPINION OF BOARD: We are concerned in this dispute with the interpretation and application of Article 7 of the National Vacation Agreement of December 17, 1941. It reads as follows:

"7. Allowance for each day for which an employe is entitled to a vacation with pay will be calculated on the following basis:

(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.

(b) An employe paid a daily rate to cover all services rendered, including overtime, shall have no deductions made for his established daily rate on account of vacation allowances made pursuant to this agreement.

(c) An employe paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this agreement.

(d) An employe working on a piece-work or tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employe worked on as many as sixteen (16) different days.

(e) An employe not covered by paragraphs (a), (b), (c), or (d) of this section will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service."

The undisputed facts are set forth in the "Joint Statement of Facts" submitted by the parties.

The Claimant held a regular position with the Carrier with a daily rate of $21.4464. She was assigned a continuous vacation period from April 7, 1966 up to and including May 4, 1966. While on her vacation she bid for the position of Secretary, Engineering Office, St. Albans, Vermont, which was advertised in Bulletin No. 6-1966, dated April 11, 1966. The Carrier awarded the position to the Claimant by Bulletin No. 8-1966, to be effective 8:00 A. M., April 18, 1966. The daily pay rate of the new position was $22.3872. Claimant returned from her vacation on May 5, 1966, and took over the duties of her new position. The Carrier, during the period from April 18, 1966 to May 4, 1966, filled the position of Secretary, Engineering Office, with a relief employe who was compensated at the rate of $22.3872 per day. The Claimant was compensated at the rate of $21.4464 per day, for her entire vacation period. Under date of May 11, 1966, she filed a claim for compensation for the period April 18, 1966 to May 4, 1966, at the higher rate of her Secretary position. The claim was progressed up to and including the highest officer of the Carrier to whom appeals may be made, who denied the claim.

The Claimant contends that, effective April 18, 1966, the position of Secretary was her "regular assignment" and, by reason of that fact and of the provisions of Article 7 (a) she should have been compensated at the daily rate paid by the Carrier on that assignment, beginning with April 18, 1966.

The Carrier contends that it has fully complied with the provisions of Article 7 (a) when it compensated the Claimant at the rate of the position on which she actually worked at the time her vacation began.

The meaning and intent of the words "An Employe having a regular assignment * * *" appearing in Article 7 (a) was one of the questions sub-

mitted to Referee Wayne L. Morse by the parties to the National Vacation Agreement in 1942 for interpretation.

The contentions of the parties before Referee Morse, were as follows:

"CARRIER'S CONTENTION: * * * interpretation of this phrase is that the words 'regular assignment' means a position which an employe has held with regularity and will continue to hold as distinguished from some position which the employe may be filling casually at the time of going on vacation."

"LABOR'S CONTENTION: Although the parties under date of June 10, 1942, agreed to the following interpretation with respect to Article 7 (a):

> 'This contemplates that an employe having a regular assignment will not be any better or worse off, while on vacation, as to daily compensation paid by the Carrier than if he had remained at work on such assignment, this not to include casual or unassigned overtime or amounts received from others than the employing Carrier.'

they have been unable to agree upon another issue between them arising out of the phrase 'an employe having a regular assignment.' It is our position that the words 'regular assignment' as used in Article 7 (a) were intended to mean any regular established job or position and, therefore, that the language 'an employe having a regular assignment' means an employe **who is filling or occupying any regular established job or position.**" (Emphasis ours.) See pages 80 and 81 of Vacation Booklet.

In his decision, page 81, Referee Morse stated, among other things, as follows:

"It is the decision of the referee that the preponderance of the evidence in the record clearly supports the position taken by the Carriers on this question."

The meaning and intent of the words "regular assignment" found in Article 7 (a) has also been passed upon by this Board in Award 10621 (LaBelle).

Although a reading of that Award discloses a factual situation somewhat different from the factual situation in the dispute before us, Referee LaBelle did have before him the interpretation of the words "regular assignment" found in Article 7(a).

In Award 10621, we said:

"We follow Referee Morse's interpretation. We are of the opinion that the words 'having a regular assignment' as used in Article 7(a) of the Vacation Agreement mean more than bidding for a position and having is assigned by reason of seniority. In addition to this, we are of the opinion it means actual acceptance by **physically taking over the duties of the position.** (Emphasis ours.) See also Awards 11734, 12315.

It is clear from the record before us that the Claimant did not physically take over the duties of the position nor did she have physical possession or occupy the position until after her vacation period.

This fact is borne out by the letter dated June 22, 1966, in the record, written by the General Chairman of the Brotherhood to the General Manager of the Carrier, wherein we find the following:

> "The claim of Mrs. Sheehan is clearly distinguishable as she actually **took over her new assignment after her vacation period.**" (Emphasis ours.)

After a careful reading of the Vacation Agreement and more particularly Article 7 (a), the interpretation of Referee Morse and the record in this dispute we accept as controlling the interpretation of Article 7 (a) as set forth in our prior Award 10621.

We are constrained to deny 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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1968.

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