

Award No. 16921

Docket No. CL-17338

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

John J. McGovern, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY, AIRLINE 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-6337) that:

(a) The Southern Pacific Company violated the Agreement at Portland, Oregon, beginning May 14, 1962, when Position No. 511, Car Distributor Clerk, was not filled during the absence of the vacationing incumbent, and all duties thereof were distributed among other employees.

(b) The Southern Pacific Company shall now be required to allow Mrs. L. J. Belland, an unassigned clerk, eight (8) hours compensation at the pro rata rate of Position No. 511 for each date May 14, 15, 16, 17 and 18, 1962.

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

Mrs. L. J. Belland (hereinafter referred to as Claimant) claimed, on regular semi-monthly time card, eight paid-for-not-worked hours each date May 14, 15, 16, 17 and 18, 1962, on the basis she was qualified and available but was not called those dates to fill vacation vacancy on Position No. 511, Car Distributor's Clerk. Claim was denied to her on May 31, 1962.

Division Chairman James H. Groskopf presented appeal in behalf of Claimant by letter dated July 17, 1962, in which he set down the facts as follows:

"We understand the facts involved in the case to be as follows:

Upon returning from vacation on May 21, 1962, Clerk Johnson was given thirty-six (36) hours' notice by the Carrier, as required by the current agreement, that his regular assignment, Position No. 511, would be abolished at close of shift May 23, 1962. During period of the notice Clerk Johnson did not perform any of the duties previously assigned to his position.

4. During the period May 14 through 18, 1962, Mrs. L. J. Belland, hereinafter referred to as the claimant, was carried in an employee status on a list of unassigned clerks, available for use as an extra employee. She performed no service during this period. During semi-monthly pay period May 16 to 31, 1962, claimant presented claim on timecard to the Carrier's Division Superintendent for eight (8) hours "paid for but not worked" for each of the days May 14 through 18, 1962, contending she should have been called to fill Position No. 511. Claim was denied by Carrier's Division Superintendent in letter dated May 31, 1962, receipt of which was acknowledged by claimant on June 11, 1962, with advice that, "Our records indicate Clerk R. W. Johnson was absent on vacation during above period and since position was not filled, your claim is not supported by Agreement provisions and is declined." This correspondence is reproduced and attached hereto as Carrier's Exhibit A.

5. By letter dated July 17, 1962, copy attached as Carrier's Exhibit B, Petitioner's Division Chairman appealed the claim to Carrier's Division Superintendent and by letter dated August 24, 1962, copy of which is attached as Carrier's Exhibit C, the latter denied the claim. By letter dated August 29, 1962, copy attached as Carrier's Exhibit D, Petitioner's Division Chairman advised Carrier's Division Superintendent that his decision was not accepted and that the claim would be appealed.

6. By letter dated September 4, 1962, copy attached as Carrier's Exhibit E, Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel. During conference of the claim Petitioner's General Chairman also submitted copy of letter attached hereto as Carrier's Exhibit F from the Division Chairman regarding rearrangement of work. By letter dated February 2, 1965, copy attached as Carrier's Exhibit G, Carrier's Assistant Manager of Personnel denied the claim. The parties hereto have, by agreement, extended the time limits during which the Petitioner could institute proceedings before this Division of the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The regularly assigned occupant of position 511 was scheduled for vacation from May 14 through May 18, 1962, the dates incorporated in this claim, and returned to his position on May 21, 1962. During his absence, his position was not filled and the entire eight hours of work per day was distributed among other employees by the action of the Carrier. Claimant, the senior unassigned clerk on Roster 1, was available and qualified for the vacant position. She performed no service between May 14 and May 18, 1962.

Upon returning from vacation on May 21st, the regularly assigned occupant of position 511 was given appropriate notice that the position would be discontinued on May 23rd.

Petitioner claims a violation of Rule 34(b) and Article 10(b) of the Vacation Agreement. The former provides that vacancies of 30 days or less shall be filled by the senior qualified unassigned employee who is available and

who has not performed 8 hours of work on the days specified. Claimant clearly falls within the provisions of this section of the Rule.

Article 10(b) of the Vacation Agreement provides:

"Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

In the instant case, 100 percent of the work of position 511 was distributed among other employees, not 25 percent. This is a clear violation of Article 10(b). Awards 15218 (Devine) and 16277 (Zack) are distinguishable from this case. We will sustain 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 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 29th day of January 1969.