



Award No. 17115

Docket No. CL-17670

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6418) that:

- (a) Carrier violated the Agreement at Greenville, South Carolina, when it failed to use Mr. R. H. Grant, Group 1 Mail and Baggage Foreman, on his rest days to fill the vacancy of Group 1 Mail and Baggage Foreman, Mr. W. R. Dixon, who was off due to illness and the position was being filled under the provisions of Rule 17 of the Clerks' Agreement, using instead a Group 5 Mail and Baggage Handler, who holds no Group 1 seniority.
- (b) Mr. Grant shall be compensated at the rate of time and one-half \$22.92 per day for each date, June 9, 10, 16, 17, 23, 24, 30, July 1, 7 and 9, 1966.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the Class or Craft of employees in which the claimant in this case held position and the Southern Railway Company.

Mr. R. H. Grant was carried on the Southern Railway System, Eastern Lines—Charlotte-Columbia Division, Seniority Roster—Group 1, Clerks, with a seniority date of June 26, 1945. He at the time of his claim had approximately twenty-one years of service.

Group 1 Mail and Baggage Foreman Mr. W. R. Dixon was off due to sickness. His assignment of Monday through Friday, with Saturday and Sunday as rest days, was being filled at the overtime rate of time and one-half by other Group 1 employees who were observing their rest days. Mr. R. H. Grant, with rest days of Thursday and Friday, was filling Mr. Dixon's vacancy on those days each week. Beginning with the week of May 30, 1966, Mr. Willie Warren, a Group 5 Mail and Baggage Handler, was stepped up to fill the vacancy of Mail and Baggage Foreman, created by the illness of Mr. W. R. Dixon. Regularly assigned Group 1 employees were not allowed any more overtime on this vacancy.

blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge.

NOTE No. 1: When such temporary vacancies are filled, either for the entire or portion thereof, as provided in Rule 8, preference for such work shall be given to employees holding seniority in group or class in which vacancy occurs, but this privilege does not extend to employees in other groups or classes unless an employee holds seniority in the group or class in which vacancy occurs.

* * *

"Rule 46—Preservation of Rates and Employment

(a) (Effective June 1, 1921) Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced. A 'temporary assignment' contemplates the fulfillment of the duties and responsibilities of the position during the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

* * *

(Exhibits not reproduced.)

OPINION OF BOARD: The undisputed facts in this case are that a Group 1 Mail and Baggage Foreman's position became temporarily vacant due to illness of the regular occupant thereof, W. R. Dixon. This position has regular assigned work days of Monday through Friday with Saturday and Sunday as rest days. Claimant filled the position as part of his regular assignment on said rest days of the regular occupant thereof. Carrier used a Group 5 Mail and Baggage Handler, Willie Warren, temporarily to fill the said vacant Mail and Baggage Foreman position, and the use of said Group 5 employe brought about this instant claim.

It is the Organization's position that the provisions of Rule 17 of the Agreement prohibit such action by Carrier.

Rule 17, the pertinent parts thereof, provide:

"Temporary Vacancies (Revised, effective October 1, 1938)

Temporary vacancies of thirty (30) days or less, or temporary vacancies up to ninety (90) days, when occasioned by the granting of leave of absence or absence on account of sickness, may be blanked for all or any part of the period of the vacancy; should such position be filled it may be done at the discretion of the officer in charge.

NOTE No. 1: When such temporary vacancies are filled, either for the entire period or portion thereof, as provided in Rule 8, pref-

erence for such work shall be given to employees holding seniority in group or class in which vacancy occurs, but this privilege does not extend to employees in other groups or classes unless an employee holds seniority in the group or class in which vacancy occurs."

This Board in Award No. 4533, in interpreting a similar rule as said Rule 17 herein, said:

"It is clear to us that under Rule 5(d) the Carrier can fill temporary vacancies occasioned by leaves of absence or sick leave, or it may blank them as it sees fit. The note attached to the rules permits the Carrier to use its own judgment as to the employee to be used in case it elects to fill the vacancy, except that it must be an employee holding seniority in the class or group in which the vacancy occurs, or an employee in another group or class who also has seniority in the class or group where the vacancy existed . . ." (Emphasis ours).

Therefore, inasmuch as Carrier filled the vacancy in question with an employee who did not hold seniority in Group 1, where the vacancy existed, Carrier violated the Agreement and the Claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.