



Award No. 17141

Docket No. CL-17320

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6332) that:

1. Carrier violated the Clerks' Agreement at Minneapolis, Minn. when it refused to allow employee Larry M. Neely to fill a vacation vacancy on Car Distributor Position No. 10050 during the period July 11th through July 22nd, 1966.
2. Carrier shall now compensate employee Larry M. Neely for the difference between the rate of pay of his regularly assigned Assistant Time Revisor Position No. 10090 and Car Distributor Position No. 10050 for ten (10) days—July 11 through July 15th, and July 18 through 22nd, 1966.

EMPLOYEES' STATEMENT OF FACTS: Larry M. Neely, who has a seniority date of January 11, 1964 in Minneapolis, Minnesota, Seniority District No. 25, is the regularly assigned occupant of Time Revisor Position No. 10090; rate of pay \$22.8384 per day.

E. R. Flaherty is the regularly assigned occupant of Car Distributor Position No. 10050 in Minneapolis, Minnesota, Seniority District No. 25; rate of pay \$24.304 per day.

J. A. Messicci, who has a seniority date of July 2, 1963 in Seniority District No. 28, is an extra, or furloughed employee in that district.

Employee Flaherty was scheduled for 10 days vacation beginning on Monday, July 11, 1966; however, due to the injury of his son, he subsequently, while on vacation, requested and was granted permission to extend it and take the two additional weeks vacation which were due him.

Under date of June 27, 1966 employee Neely made request in writing to Superintendent N. H. McKegney for the vacation vacancy on Car Distributor Position No. 10050 during the period July 11th through 22nd, it being unknown at that time that the vacation vacancy on Position 10050 would extend beyond July 22nd. See Employees' Exhibit "A".

his own time on at least 5 different days "breaking in" on Position No. 10050 or, in other words, learning to perform the assigned duties thereof, and who also requested to fill same.

Claimant Neely was not assigned to fill the temporary vacation vacancy on Car Distributor Position No. 10050 because he was not qualified, a fact which he personally admitted in his aforementioned request of June 27, 1966 and a fact with which the Carrier agrees.

It is significant that employee Flaherty was absent on vacation for 20 consecutive work days during the period July 11 through August 5, 1966 and employee Messicci filled the temporary vacation vacancy on vacationing employee Flaherty's regularly assigned Position No. 10050 during the entire period, i.e., July 11 through August 5, 1966, yet the instant claim in behalf of claimant Neely is only for a 10 consecutive working day period from July 11 through 22, 1966.

Attached hereto as Carrier's Exhibits are copies of the following letters:

Letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of January 10, 1967.....Carrier's Exhibit "B"

Letter written by Mr. Amour to Mr. Hopper under date of April 10, 1967.....Carrier's exhibit "C"

Letter written by Mr. Amour to Mr. Hopper under date of May 15, 1967.....Carrier's Exhibit "D"

Copy of notarized statement from Mr. C. V. Eby, Assistant to Superintendent at St. Paul, Minnesota....Carrier's Exhibit "E"

Copy of witnessed statement dated February 21, 1967 from Mr. W. J. Zahradka, Chief Clerk to the Superintendent at St. Paul, Minnesota.....Carrier's Exhibit "F"

(Exhibits not reproduced)

OPINION OF BOARD: The claim alleges a violation of the Agreement because the Carrier did not permit the Claimant to fill Car Distributor Position No. 10050 when the regular occupant of that position was on vacation.

The Carrier contends that Claimant was not used on the Car Distributor position because of his lack of qualification for the position.

Article 12 (b) of the Vacation Agreement provides that absences from duty for vacation purposes will not constitute "vacancies" under any agreement. Furthermore, numerous awards of this Division have established the principle that the determination as to whether an employee has sufficient fitness and ability to fill a position is a prerogative of management, and that once the fitness and ability of an employee have been found by the Carrier to be lacking, the burden rests upon the Claimant to overcome that decision by substantial and competent proof. See Awards 5417, 6829, 11231, 12394, 14040, among others. The Petitioner has not met the burden of proof required of it. The claim will, therefore, be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.