



Award No. 17180

Docket No. CL-17884

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6518) that:

1. The Carrier violated the Clerks' Agreement when it failed to compensate Mail and Baggage Handler, M. E. Thorpe for September 29, 1967, on which date he was unable to work due to sickness.
2. The Carrier shall be required to compensate Mr. M. E. Thorpe in the amount of \$22.91 for September 29, 1967, in accordance with provisions of Rule 47 of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The claimant in this case is Mr. M. E. Thorpe, Mail and Baggage Handler, Group 2 employee, seniority date September 23, 1958, was absent account being sick on September 29, 1967, and his position was filled by a protected employee without additional expense to the Carrier.

Claim was filed with the Terminal Trainmaster (Employees' Exhibit No. 1) on behalf of Claimant by the Local Chairman. Claim was declined by the Terminal Trainmaster (Employees' Exhibit No. 2). Appeal was filed by the General Chairman with Mr. K. E. Bomar, Superintendent (Employees' Exhibit No. 3). Superintendent Bomar declined the claim (Employees' Exhibit No. 4). Appeal was then filed with Mr. C. E. Weaver, Jr., Assistant Vice President-Labor Relations, under date of November 1, 1967, (Employees' Exhibit No. 5).

Mr. Weaver denied the appeal, his letter of December 15, 1967, (Employees' Exhibit No. 6), stating in his letter, last paragraph: "the sick pay rule contemplates that if the vacancy caused by illness must be filled and the employee filling same is paid an amount equal to or in excess of the earnings of the position on which the vacancy occurs no sick time will be allowed."

Conferences were held March 14, 1968, April 18, 1968, May 22, 1968, and June 4, 1968. After a full discussion of the claim carrier advised the

OPINION OF BOARD: Claimant, a Mail and Baggage Handler, was off sick on September 29, 1967. His position was filled by Carrier on this date by another employe, J. Vicari. Claimant alleges that under Rule 47(a) of the Agreement, he is entitled to be paid for said day while off sick.

Rule 47(a) provides:

"Employees in Groups 1 and 2 as outlined in Rule 1 will be allowed compensation for time lost account personal illness, provided the work is kept up by the remaining employes without additional expense to the Carrier, on the following basis:

....."

The Organization's contention is that inasmuch as employe, J. Vicari, who was used to fill Claimant's vacant position when Claimant was off sick, was a protected employe under the February 7, 1965 Agreement, and therefore Carrier did not incur any additional expense when it used Mr. Vicari for the vacant position in question; and thus the claim should be sustained.

The Carrier's position is that Rule 47 does not require payment to an absent employe account of sickness when his job is filled; that the work was not kept up by the remaining employes due to an unassigned employe being called in to perform Claimant's work; that it is immaterial whether or not Carrier incurred additional expense inasmuch as Claimant did not qualify for said sick pay; that the Organization has previously agreed with Carrier's position in this dispute inasmuch as it did not appeal another claim parallel to the one at issue.

The test to be used in deciding this dispute is not, as Carrier would have us believe, whether Carrier filled the vacant position in question, but whether or not Carrier filled the position in question at additional expense to Carrier. The words in said Rule 47(a), "the work is kept up by the remaining employes without additional expense to the Carrier," have to be read together. Therefore, we have to decide whether or not Carrier incurred additional expense when it used employe, J. Vicari, in this instance.

It is undisputed that Mr. Vicari was a protected employe under the February 7, 1965 Job Stabilization Agreement, and, as such, would have been paid by Carrier whether working or not. Therefore, it is our conclusion that the work was kept up without additional expense to Carrier, and the Claim must, accordingly, be sustained.

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 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 28th day of May 1969.