



Award Number 17434

Docket Number CL-18099

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

ATLANTA JOINT TERMINALS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6526), that:

1. The Carrier has violated and continues to violate the Clerks' Agreement, effective March 1, 1941, as amended, and particularly the February 10, 1968 Memorandum Agreement, a part of the said Clerks' Agreement, beginning on Saturday, March 2, 1968, when it failed to call and use Clerk J. L. McWaters, the senior, qualified available clerk on the short vacancy on Utility Clerk's position from 11:00 P.M. to 7:00 A.M. on that date.
2. The Carrier shall now be required to pay Clerk J. L. McWaters one (1) day's pay at penalty rate, or \$42.14, account this violation.

EMPLOYEES' STATEMENT OF FACTS: Under date of March 5, 1968, Clerk J. L. McWaters, Atlanta Joint Terminals, Atlanta, Georgia, filed claim through letter addressed to Chairman, Protective Committee, S. S. Shepard, Jr., for one day's pay at the rate of his assigned position at Yard Office, \$28.09 per day straight time rate of \$42.14 per day penalty rate, for one day's pay account Carrier's violation of Rules 8 and 20(c), as well as Memorandum Agreement of February 10, 1968, account Utility Clerk G. M. Lowe reporting off sick at 3:20 P.M. In this letter Clerk J. L. McWaters outlined the reason for the claim and copy of this letter is hereto attached and identified as Employees' Exhibit No. 1.

March 9, 1968, Chairman S. S. Shepard, Jr. duly presented this claim to Trainmaster J. E. Bradshaw, the initial Officer of the Carrier designated by it to handle claims and grievances, and copy of this letter, which is self explanatory, is hereto attached and identified as Employees' Exhibit No. 2.

February 14, 1968, (Mr. Bradshaw evidently meant March 14, 1968), Trainmaster Bradshaw replied to Chairman Shepard's letter of March 9, 1968 and alleged that Mr. McWaters was not available nor eligible on March 2, 1968. Copy of Mr. Bradshaw's letter is hereto attached and identified as Employees' Exhibit No. 3.

March 16, 1968, Chairman Shepard appealed the claim to General Superintendent-Chief Engineer K. C. Dufford, the next higher Officer of the

OPINION OF BOARD: The claim herein arose because the Carrier blanked a position of Utility Clerk at Hulsey Yard, Atlanta, Ga., assigned hours 11:00 P.M. to 7:00 A.M., on Saturday, March 2, 1968, following receipt of advice that the regular incumbent of the position, G. M. Lowe, would be unable to report for duty because of illness.

The parties seem to be in accord that the crux of the dispute is the Memorandum of Agreement of February 10, 1968, which reads:

"Short vacancies, as defined in Rule 8 of the schedule agreement, occasioned by the failure of a regular assigned or relief assigned employee to report for duty, will be filled in the following manner:

"(a) By the senior qualified extra employee who will otherwise not have forty hours work in that week or who has not made 8 hours in the previous 24-hour period.

"(b) By the employee who works the position five days per week, if he desires the work, provided the extra board is exhausted.

"(c) By the senior qualified available regularly assigned employee on his day off desiring the work."

The Petitioner contends that the above-quoted Memorandum of Agreement makes the filling of vacancies mandatory. The Carrier contends that the Memorandum Agreement prescribes the manner in which short vacancies will be filled only when it is necessary that the positions be filled, but it does not agree that the Memorandum of Agreement in and of itself makes the filling of vacancies mandatory.

It is well established that a Carrier may blank a temporary vacant position in the absence of a specific rule prohibiting it from doing so. Awards 16876, 16840, 16815, 16187, among others. The Memorandum of Agreement of February 10, 1968, cannot properly be construed as prohibiting the blanking of a temporary vacant position. It specifies the method to be used in selecting the replacement and becomes applicable after the Carrier exercises its managerial prerogative to fill a temporary vacancy. Awards 15979, 14252, 12358. The claim will 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 11th day of September 1969.