



**Award Number 17587**

**Docket Number SG-18182**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Gene T. Ritter, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY  
— EASTERN LINES —**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company:

On behalf of Signalman R. L. Leach for eight (8) hours at the pro rata rate of the position of Signal Maintainer at Topeka, Kansas, account Carrier failed to comply with Section 12(b) of the Vacation when assigning vacation relief at Topeka on August 14, 15, 16, 17, and 18, 1967, and an employee with less seniority than Mr. Leach was used.

(Carrier's File: 132-72-33)

**EMPLOYES' STATEMENT OF FACTS:** This dispute involves the application of Section 12(b) of the National Vacation Agreement and the Employees' contention that Carrier made no effort to observe the principle of seniority when from August 14 to 18, 1967, it provided relief while the Signal Maintainer at Topeka, Kansas was on vacation.

Section 12(b) reads:

"As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

Despite the specific request made through the Signal Foreman of Gang # 2 to the Signal Supervisor's office by Eastern Division Signalman R. L. Leach that he be permitted to work that particular week in relief at Topeka, Carrier assigned a junior Signalman, Mr. D. R. Horne, to work the position.

Mr. Leach has seniority in Class B as of 6-25-62; whereas, Mr. Horne has a date in the class of 2-07-66. Leach is senior to Horne in Class B, which class includes employee classifications of Special TCS Signal Maintainer, Signalman, Signal Maintainer, Signal Shop Signalman, Retarder Signal Maintainer, and TCS Signal Maintainer.

The Employees, in the instant dispute, contend that Claimant Leach, who is senior to Mr. Horne, should have been used to perform the vacation relief work at Topeka during Mr. Henry's absence, basing their contention on the fact that Claimant had, previous to August 14, 1967, advised the Signal Supervisor's office that he desired to protect the assignment. The Employees indicated that Claimant, while assigned to Signal Gang No. 2, asked his foreman to contact the Signal Supervisor's Office at Emporia to see if he could relieve Mr. Henry during the period August 14-18, 1967. Signal Foreman Young did make the request, as evidenced by his statement as follows:

"December 26, 1967

Mr. Bill Henry, Local Chairman

While Bill Henry was relieving Jim Crain, Topeka, and I was relieving Foreman on Signal Gang No. 2, I was asked by Bob Leach to ask the office in Emporia if he could relieve Bill Henry when Bill went to Convention.

I called the office and Gerald Franklin was there so I asked if Bob Leach could relieve Bill and he said he thought Dare Horne would relieve him. That was all that was said.

/s/ W. E. YOUNG"

It will be noted in then Signal Foreman Young's letter to Local Chairman Henry that Mr. Franklin said he "thought" Horne would relieve him, he did not say that Horne "would" relieve him. It has not been the practice in the Eastern Division to make assignments based on telephone conversations without a letter to confirm such a request. Claimant Leach did not follow up the request in writing.

The instant claim was initially presented to the Carrier's Superintendent at Emporia, Kansas, by Local Chairman W. L. Henry in an undated letter, received in the Superintendent's Office on September 8, 1967, and attached as Carrier's Exhibits "B" through "M" is the exchange of correspondence in the appeal of the claim to and including the highest Officer of Appeal, Mr. O. M. Ramsey. Following Mr. Ramsey's declination of the claim on March 28, 1968 (Carrier's Exhibit "G") the case was discussed in conference at Chicago on May 13, 1968 and the prior declination was reaffirmed.

(Exhibits not reproduced)

**OPINION OF BOARD:** The Signal Maintainer at Topeka, Kansas, was on vacation August 14 to August 18, 1967. This Claimant made oral request to relieve the relief Signal Maintainer, who was attending a convention, to the relief Signal Foreman on Gang #2. The relief Signal Foreman then called the office and relayed the request of Claimant for this relief work. An employee, junior in seniority to Claimant, was called by Carrier to work on the position of the vacationing Signal Maintainer on the dates in question. The Organization contends that Claimant, who was senior to the employee used by Carrier to perform the vacation relief work, should have been allowed to perform this work. Carrier contends that it has not been the practice on this property to make assignments based on telephone conversations without a letter confirming such a request. Carrier further contends that this dispute should be decided on the basis of Article 4b(1) (first in—first out rule) and that Section 12(b) should

be disregarded. Claimant contends that this dispute should be settled on the basis of Section 12(b). Section 12(b) is as follows:

"As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

This Board finds that Carrier's contentions are without merit. The record is void of any requirement that a request to work relief must be in writing. The record is also void of any probative evidence that Carrier made any serious effort to observe the principle of seniority in this instance.

It, therefore, follows that Carrier violated the Agreement by not utilizing the services of this Claimant who was the senior employee available for this relief work.

This Board further finds that the claim should have included the date of August 14th, and, therefore, the claim will only be sustained insofar as August 15, 16, 17 and 18, 1967.

**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.

#### A W A R D

Claim sustained for August 15, 16, 17 and 18, 1967; claim denied for August 14, 1967.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1969.