



Award Number 17765

Docket Number CL-17806

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6455) that:

- (1) The Carrier violated the Agreement on May 23, 1967, when it failed to call Claimant, Mr. B. K. Walker, Gateman, for rest day work to fill an existing vacancy in accordance with said Agreement, and,
- (2) The Carrier now be required to compensate Claimant Walker in the amount of eight (8) hours at time and one-half rate of his Gateman position as a result of said violation.

EMPLOYEES' STATEMENT OF FACTS: There does not appear to be any dispute in the facts of this case.

Claimant Walker was the incumbent of a regular position on the 3:30 P.M. to 12:00 midnight shift, with Tuesday, the date of claim as one of his assigned rest days.

On the claim date Gateman, Mr. L. R. Smith, the incumbent of a regular position on the 8:45 P.M. to 5:15 A.M. shift who was regularly assigned to work reported at about 6:00 P.M. (nearly 3 hours in advance of the starting time of his assignment) that he would be unable to protect his assignment due to illness.

The Carrier blanked the vacancy created by Smith's absence.

Claim was filed on behalf of Claimant Walker by Local Chairman, Marion D. Jenkins, in letter dated June 2, 1967 (Exhibit No. 1) alleging a violation of the Agreement, particularly the Memorandum Agreement identified as Appendix G thereof.

Station Master, Mr. P. L. Bolander, in a letter dated July 26, 1967, to Mr. Jenkins denied the claim. (Employees' Exhibit No. 2).

Appeal and claim was duly filed by the General Chairman with the Personnel Manager, Mr. U.B. Llewellyn, by letter dated August 18, 1967, with copy to Station Master Bolander advising him of the employees rejection of his decision (Employees' Exhibit No. 3).

Mr. U. B. Llewellyn, Manager of Personnel, is the highest Carrier official to whom appeals may be made.

Mr. Llewellyn denied the appeal in his letter of September 5, 1967, (Employees' Exhibit No. 4).

Final conference was held on December 12, 1967 in which Mr. Llewellyn reaffirmed his denial of September 5, 1967.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: On May 23, 1967, Gateman L. R. Smith, who held a regular assignment with hours 8:45 P.M. to 5:00 A.M., reported off sick and it was not necessary to fill his position. Claim of Gateman B. K. Walker was submitted for a day's pay at time and one-half account not called on his rest day to fill Smith's position, and was denied on the basis that the remaining gateman force readily handled all gatemen work without hardship or necessity for overtime.

(Exhibits Not Reproduced)

OPINION OF BOARD: On May 23, 1967, the regularly assigned Gateman on the 8:45 P.M. to 5:15 A.M. shift reported three hours before he was due to go to work that he was sick and would not be able to protect his assignment. Carrier blanked his position. This claim is on behalf of Mr. B. K. Walker, a Gateman whose rest day this was, for eight hours at time and one-half pay for not being called to fill this vacancy as is alleged the Agreement calls for.

Employees cite Appendix G, which governs the filling of short vacancies, as authority that all short vacancies shall be filled as provided. (Emphasis ours). We agree, if indeed the vacancy had to be filled, it must have been filled as provided in the applicable provisions of the Agreement. But our decisions have consistently held that in the absence of a specific rule prohibiting the blanking of a temporary vacancy, the right of the Carrier to do so is unrestricted. Awards 16815, 16187 and 12358.

There being no provision prohibiting such blanking, we find the claim insupportable under the rules, and accordingly, we deny it.

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 March 1970.