

Award No. 18905
Docket No. MW-18798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BURLINGTON NORTHERN, INC.
(Formerly Chicago, Burlington & Quincy Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Crossing Flagman Joe Sauado to work the third trick instead of the first trick crossing watchman's position at 22nd and Sangamon Streets, Chicago, Illinois during the period extending from February 3 to February 28, 1969, inclusive. (System File 15-3/M-1330-69).

(2) Crossing Flagman Joe Sauado be allowed eight (8) hours' pay at his straight time rate of pay for each day he was not allowed to work the aforementioned assignment during the first trick.

(3) Crossing Flagman Joe Sauado be allowed the difference between what he should have received at his time and one-half rate and what he was paid at his straight time rate for working the third trick crossing watchman's position.

EMPLOYEES' STATEMENT OF FACTS: The Carrier's crossing at 22nd and Sangamon Streets is protected by crossing flagmen on a twenty-four (24) hours per day, seven (7) days per week basis. Mr. Sylvester is regularly assigned to the first trick (7:00 A. M. to 3:00 P. M.), Mr. Szajek is assigned to the second trick (3:00 P. M. to 11:00 P. M.) and Mrs. Pratt is assigned to the third trick (11:00 P. M. to 7:00 A. M.). Mr. Giorgi and Claimant Sauado are the regularly assigned relief flagmen, with Claimant Sauado regularly assigned to the one (1) day per week tag end relief position. In addition to filling the tag end relief position, the claimant has traditionally been assigned to relieve crossing flagmen during their vacation absences and when they are absent for other reasons.

Mr. Sylvester took his annual vacation during the period extending from February 3 to February 28, 1969, inclusive. Instead of assigning the claimant to work the first trick during Mr. Sylvester's vacation absence, the Carrier assigned Mrs. Pratt thereto and directed and required the claimant to work Mrs. Pratt's third trick position. Mrs. Pratt returned to her regularly assigned third trick position on March 3, 1969.

The claimant, regularly assigned relief crossing flagman, was entitled to be assigned to fill the first trick position during the incumbent's vacation absence.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Crossing Flagmen are continuously assigned to the railroad crossing at 22nd and Sangamon Streets, Chicago, Illinois, working 24 hours a day and 7 days a week. The assignments of the individual flagmen, listed in the order of their respective seniority are shown as follows:

J. H. Sylvester, 7 A. M. to 3 P. M., 5 days per week.

C. S. Szajek, 3 P. M. to 11 P. M., 5 days per week.

J. Giorgi, Swing Assignment, working 5 of the 6 rest days of the three regular flagmen.

Mrs. Leona Pratt, 11 P. M. to 7 A. M., 5 days per week.

Joe Sauado, Extra Flagman, working the one remaining rest day of regular flagmen, and filling other vacancies as needed.

First shift Crossing Flagman Sylvester was absent on vacation during the four-week period February 3 to February 28, 1969 inclusive. During this period Mrs. Leona Pratt was moved up to fill the vacation vacancy on the first shift at her request, and Claimant Extra Flagman Sauado was used on the third shift assignment. The rates of pay of the first and third shift positions are the same.

The claim here before the Board is based upon the Employees' contention that the handling described was in violation of rules of the agreement, and that Claimant Extra Flagman Sauado should have been used to fill the vacation vacancy on the first shift.

OPINION OF BOARD: The railroad crossing at 22nd and Sangamon Streets in Chicago is protected continuously by flagmen. Assignments to the crossing are shared by five regularly assigned employees, including Claimant. Twenty of the twenty-one shifts per week are worked by three regular flagmen and a swingman and the remaining shift is worked by Claimant. Claimant, being the tag-end relief flagman, is also utilized to fill in for absent flagman as needed.

When the first trick regularly assigned flagman left on vacation his position was filled by the third trick regularly assigned flagman who had personally requested the temporary change. In turn, Claimant was assigned to work the third trick position until the regular first trick incumbent returned from vacation and the regular third trick incumbent resumed her normal duties on her own trick. Claimant contends that among his primary duties is the

responsibility to work regular bulletined positions while the incumbent of those positions is on vacation. He maintains that he should have been assigned to the first trick during the vacation period of the incumbent of that position in preference to all others. Hence, the gist of the issue is whether the Carrier acted improperly in temporarily assigning the regular third trick flagman to the first trick job when a relief flagman was available for the assignment.

The Carrier relies on Rule 12(b) of the Vacation Agreement as authority for the appropriateness of its assignment:

"As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights 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 employees is not utilized, effort will be made to observe the principle of seniority." (Emphasis ours.)

The Carrier interprets this language as giving the Carrier the option to use a regular relief employee to cover vacation openings or not at its discretion. We do not believe that his provision was intended to convey that meaning.

First, it is apparent that the provision was principally intended to remove vacation "vacancies" from the bidding rules, thus avoiding wholesale reshuffling of employees each time a man left on vacation. Second, the language does not purport to override other agreed upon practices for filling positions uncovered because of vacations. To the contrary, the underlined language of Rule 12(b) reflects a recognition of the fact that most agreements provide for regular relief personnel to fill in for vacationing employees and carefully avoids disturbing those arrangements. The language merely provides that if you have no agreement to use regular relief personnel or regular relief personnel is not available the Carrier should observe seniority in filling the temporarily open position unless there is a good reason for not observing seniority. Again, the thrust is that vacation openings shall not be treated as "vacancies" and the principles of the rules pertaining to bidding shall have no application.

In this case, the Carrier is trying to apply bidding concepts to the vacation situation. It argues that the third trick flagman had greater seniority than Claimant and therefore Carrier was obligated to assign her to the job since she requested the assignment. Carried to its logical extreme, this argument would require Carrier to submit to a possible reshuffling of its workforce every time a bulletined position was uncovered by a vacation, a result which Rule 12(b) was principally intended to guard against.

Having rejected Carrier's argument and having found that the quoted portion of the Vacation Agreement is not intended to supercede agreements on the method of providing vacation relief, we must nevertheless find that an agreement or practice on vacation relief which supports Claimant's assertion of a paramount right to fill vacation openings exists before we can sustain Claimant's claim. The record herein does not clearly reveal any such agreement or practice. We are compelled therefore to hold that Claimant has failed in his burden to demonstrate that Carrier's action violated the Agreement.

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.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 23rd day of December, 1971.