

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19628  
Docket Number CL-19548

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline & Steamship Clerks,  
( Freight Handlers, Express & Station Employees  
(  
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7009)  
that:

(1) Carrier violated the Agreements between the parties when on June 22, 23, 24, 25, 26, 29, 30 and July 1, 1970 it refused to permit Claimant R. M. Peck to move up in line with his seniority to fill a higher rated position for which he was qualified in violation of past practice and Agreement rules and instead, utilized a junior employee for this vacancy.

(2) Mr. R. M. Peck now be compensated for the difference in the rates of pay of Store Helper Position No. 416, rate \$24.8288 per day and that of Store Clerk Position No. 4, rate \$27.0969 per day, for the eight days vacation vacancy as hereinbefore set forth.

OPINION OF BOARD: During the vacation of a Clerk 4 the Carrier refused to permit the claimant, a Stores Clerk 3, to move up in line with his seniority to fill that higher rated position for which he was qualified.

The Organization contends that this refusal is in violation of Rule 22 of the Agreement between the parties governing Status of Employees on Short Vacancies and Temporary Positions. That rule reads as follows:

"In the filling of temporary positions or short vacancies at locations where one or more employees are already employed, the regular employees may, at the discretion of the supervisor in charge (emphasis added) be given an opportunity to work the preferred position, and the extra employee the position left after the regular employees are given their choice. When temporary positions or short vacancies terminate, the affected employees will return to their former position or status."

This Board has already held in Awards 13178, Referee Dorsey and Award 16981, Referee Ritter and Award 17926, Referee Quinn, that where a rule is strictly a permissive rule, as in the instant case "at the discretion of the supervisor in charge", then the employees can have no enforceable right as a result of that rule.

This Board further finds that Article X Section 1, Par: (f) of the Agreement of December 1, 1969 (pages 9-10) provides specifically that "Incumbents of extra Board positions will have preferential rights over extra list employees, to short vacancies, temporary assignments .... and will be notified or called to work on a rotating basis, first in, first out." And furthermore, Paragraph 1(o) of the same Article and Section provides: "Organizations and Management will cooperate in the establishment of the extra boards and extra board positions and will give due consideration to the necessity of properly scheduling annual vacations of employees in both crafts to permit Carrier to relieve such employees for vacations with extra board employees."

The Carrier's refusal to permit the claimant to fill a higher rated position was in accordance with the Agreements, including the Agreement of December 1, 1969.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The claim must be denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.