

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20595
Docket Number CL-20462

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7413) that:

1. Carrier violated Rules 3(b), and 16(e) among others of the current Clerks Agreement as amended, when it assigned a school teacher, a non-bona-fide employee to perform unassigned clerical rest day work on its first trick checkers position at Waterville, Maine.

2. Carrier shall be required to compensate the regular employee, Mr. Arthur E. Ladd, three (3) days pay at punitive rates for said violations covering Saturday, July 22, 1972, Sunday, July 23, 1972 and Saturday, August 12, 1972.

OPINION OF BOARD: For the five years preceding this claim, Mr. Roger St. Amand, who worked as a teacher during the regular school year, was employed by Carrier to perform vacation relief during the summer at Waterville, Maine. In the summer of 1972, he was rehired to cover a clerical vacation vacancy from June 19 through June 30, 1972. After working the vacation relief, he worked a one-day vacancy on July 6, 1972 on the Bill Rack Clerk's Position and was then used to work the First Trick Checker Position at Waterville on three separate rest days of that position (July 22, 23, and August 12, 1972). The regular Checker Clerk claims punitive pay for the rest day work performed by Mr. St. Amand on the theory that Mr. St. Amand was not a bona-fide employee when the disputed work was performed. The issue thus drawn is whether Mr. St. Amand was an outsider or a bona-fide employee of the Carrier when he performed the tag-end rest day work on the claim dates of July 22, 23, and August 12, 1972.

A great number of prior Awards support the Employees' position that, although a new employee can be hired to perform vacation relief work, he cannot perform tag-end rest day work until he has acquired seniority by completing 60 days of vacation relief work. Award Nos. 5558, 5620, 15802, 16560, et al. The Carrier expresses awareness of these awards but argues that -

"... These same Awards hold that a person hired to cover temporary vacancy or a vacation vacancy before being used to cover tag-end rest day work established a legitimate employment relationship and such person may thereafter be used to cover tag-end rest day work...."(Emphasis added)

The Carrier's view of the prior Awards appears to be that it is irrelevant whether a person works a "temporary vacancy" or a "vacation vacancy" because, in either case, such person can thereafter perform tag-end rest day work. We agree in part and disagree in part. We think the prior Awards make it clear that a person who covers a "vacation vacancy" (i.e., who performs vacation relief work), but who does not complete 60 days of such work, does not acquire a status from such work which permits him to be thereafter used to perform tag-end rest day work. On the other hand, the prior Awards appear to impose no restriction on the performance of tag-end rest day work by a person who previously performed work on a "temporary vacancy" and who established seniority by reason of working such "temporary vacancy". In the facts of the instant dispute, Mr. St. Amand was not rendered a bona-fide employee who could perform tag-end rest day work by reason of his working vacation relief from June 19 through June 30, 1972, the reason being that he acquired no seniority from this work. However, there is no dispute that Mr. St. Amand covered a one-day vacancy on July 6, 1972 on the Bill Rack's Position; as a result of this work, he established seniority on July 6, 1972 and thus he had an established seniority date when he performed the tag-end rest day work on July 22, 23, and August 12, 1972. We are aware that he had worked as a school teacher during the regular school term for several years preceding this dispute. Prior Awards indicate, however, that such outside employment is not necessarily a controlling factor and we conclude in the instant facts that the decisive fact is that Mr. St. Amand held a seniority date under the provisions of the applicable agreement when he performed the tag-end rest day work. We shall therefore deny the claim.

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

Award Number 20595
Docket Number CL-20462

Page 3

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1975.