

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20956
Docket Number CL-20871

Louis Norris, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7657) that:

(1) The Carrier violated the Agreement when they failed to promptly bulletin a vacancy as Chief Clerk in accordance with the bulletin and assignment rules (6 thru 10) thereby denying Claimant the right to promote.

(2) The Carrier be required to compensate Claimant Joseph Powell for the difference between the daily rate of Chief Clerk, MW, (\$43.88808 per day) and that of the daily rate of the position of Equipment Record Clerk #1 (\$40.11105 per day) for the dates of June 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, July 2, 3, 4, 5 and 6, 1973.

(3) That Carrier be required to pay seven (7%) interest compounded annually on such difference until Claimant is made whole.

OPINION OF BOARD: On May 14, 1973, incumbent Chief Clerk McClure became ill and took extended sick leave. Petitioner contends that Carrier's failure to bulletin the vacancy "promptly" violated Rules 5 through 10 of the Agreement and denied Claimant the right to promote. Compensation is therefore demanded at the rate of pay "differential" for various dates in June and July, 1973, plus "interest at seven per cent". It is not disputed that McClure actually returned to work on July 9, 1973, and that his position was "blanked" by Carrier during his absence.

Carrier's contention that this claim lacks merit and should be denied is based on two propositions. Firstly, it is asserted that under Rule 51 an "exception" exists as against Rule 6 which provides that "New positions created or vacancies occurring will be promptly bulletined - - -." Rule 51 provides as follows:

"Rule 51 - Sick Leave

Where the work of an employee is kept up by other employees without cost to the Carrier, a clerk who has been in continuous service of the Carrier one year and less than two years, will not have reduction made from his pay for time absent account of a bona-fide case of sickness until he has been absent five (5) working days in the calendar year; a clerk who has been in the continuous service two years and

less than three years, seven and one-half (7½) working days; a clerk who has been in continuous service three years or longer, ten (10) working days. Deductions will be made beyond the time allowance specified above.

The employing officer must be satisfied that the sickness is bona-fide, and that no additional expense to the carrier is involved. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a company physician, will be required in case of doubt.

The above limits of sick leave may be extended in individual meritorious cases."

It is quite obvious that the clear purpose and intent of Rule 51 is to set forth standards and periods of time during which sick leave pay will be allowed. However, we see no provision, or language to that effect, in Rule 51 which establishes an exception to Rule 6 on prompt bulletining of vacancies. Nor are we authorized to insert such provision where none exists. Prior Awards of this Board are legion on the established principle that the Agreement must be applied and interpreted as written and as negotiated between the principals.

Secondly, and more to the point, is Carrier's contention that it is within its management prerogatives to blank a position, as it did here, and to determine at what reasonable point to fill a vacancy. In the latter context, we held in Award 15979 (Engelstein) as follows:

"The last paragraph of this Rule establishes a procedure for bulletining a position when a vacancy occurs. This provision becomes applicable after Carrier exercises its managerial prerogative to fill a vacancy." (Emphasis added).

To the same effect, see Awards 16260 (Dugan), 16799 (Perelson), 17421 (Goodman), 12099 and 12358 (Dorsey), 14252 (Rohman), 16092 (Engelstein) and 16468 (McGovern).

On the question of "blanking", and particularly under the Clerks' Agreement, we held in Award 19668 (O'Brien):

"It is undisputed that Carrier has the right to blank a position in the absence of the regularly assigned incumbent where there is no contractual restriction against such blanking".

In the instant dispute, therefore, under Rule 51 the work of McClure was "being kept up by other employes without cost to the Carrier", and this assured McClure of sick leave pay for the specified time set forth in the Rule. We do not hold that such practice of having McClure's work "kept up by other employes" could be continued by Carrier indefinitely. We do hold, however, particularly in view of the short period of time here involved, that it was within Carrier's management prerogatives to blank the position and, for a reasonable period time, to refrain from bulletining the position under Rule 6.

We note that under Rule 9 indefinite vacancies "need not be bulletined until the expiration of 30 days" "where there is doubt as to its duration". Also, that Rule 10, covering "long vacancies", provides that when "it is known" or "when it becomes evident that it will be of more than 30 days duration, the position should be bulletined promptly as provided in Rule 6". In the latter context, it is Petitioner's contention that Carrier "had reasonable knowledge that due to the nature of Chief Clerk McClure's illness, he would be absent for a period of more than 30 days - - -".

However, we find nothing in the record before us to indicate the nature or seriousness of McClure's illness; nor the submission of any facts, other than mere conclusory assertions, showing on what basis Carrier possessed the "reasonable knowledge" referred to above. In fact, McClure returned to work on July 9, 1973. His absence, therefore, was not for an "extended" period of time and does not support the assertion that he was "seriously ill".

Additionally, the prior Awards cited by Petitioner are not germane factually and do not support Petitioner's contentions. Thus, for example, Awards 4962 and 4990 deal with filling vacancies by assignment in violation of the Scope Rule of a particular Agreement. Award 7034 deals with assignment to claimant of the work of a blanked position without assigning the position. Awards 7255 and 19668 are to the same effect as Award 7034.

In these circumstances, therefore, and under the particular facts of this dispute, we cannot conclude that Carrier acted unreasonably or in violation of the Agreement. Accordingly, based on the record evidence and controlling authority, we will 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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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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: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1976.