

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22275
Docket Number CL-22165

Nathan Lipson, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8392) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed and refused to accept application made by Miss F. L. Fambrini under the terms of Rule 34 (c) thereof to fill Assistant Head Timekeeper Position No. 109; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Miss F. L. Fambrini eight (8) hours' additional compensation at Assistant Head Timekeeper's rate of pay each date April 17, 18, 19, 22, 23, 24, 25, 26 and 29, 1968.

OPINION OF BOARD: In the course of arguing this case at the property and appealing same, the Organization took the position that the Carrier's responses to the appeal of the claim did not meet the requirements of Article V of the contract, and also that the Carrier's handling of the issue in its initial submission constituted a waiver of any defense to the claim. There is no need to detail the weaknesses in the Organization's procedural arguments, since such arguments were not pressed in the appeal to this Board. Accordingly, no procedural issues will be considered herein, but the matter will, instead, be decided on the merits.

The instant claim arises from the absence from duty due to illness of Miss M. V. Keatts from April 16 through April 29, 1968. Miss Keatts was the incumbent of Position No. 109, Assistant Head Timekeeper, in the Timekeeping Section of the Payroll and Miscellaneous Services Department, located at the Carrier's General Offices at San Francisco, California; said Department performs various timekeeping and payroll functions for the Carrier, which had been previously handled in several regional or district offices. At the time of the claim, the Timekeeping Section consisted of 2 Head Timekeepers, 6 Assistant Head Timekeepers, and 74 Timekeepers.

In April, 1968, the highest rated of the above positions received \$29.5349 per day, the second position carried a daily rate of \$28.4263, and the lowest position paid \$27.3608 daily. Timekeepers have payroll audit duties; Assistant Head Timekeepers' duties include instruction to and assistance to Timekeepers, the handling of claims, the requirement to keep current on agreements for guidance of Timekeepers, and, finally, the assumption of Timekeepers' duties, when absences in said classification occur. Head Timekeepers are in charge of all operations in the Timekeeping Section, and, consequently, perform a minimal amount of direct supervision or assistance to Timekeepers.

In any event, the Carrier, while conceding that the various Timekeeper classification positions were bulletin jobs, denied that there was an obligation to fill the Assistant Head Timekeeper position during the dates at issue. Instead, the Carrier took the position that a fair reading of Rule 34(c) allows the employer to blank out a position in the absence of the regular incumbent, and to distribute the involved work to others. Rule 34, which bears the title "Short Vacancies", reads as follows:

"(a) New positions and/or vacancies of thirty (30) calendar days or less duration, may be filled without being advertised, at the option of the employing officer. New positions and/or vacancies of doubtful duration, need not be advertised until the expiration of thirty (30) calendar days, in connection with which, so far as practicable, the approximate duration of the work will be given.

NOTE: Subject to (b) and (c) of this rule.

(b) New positions or vacancies of thirty (30) calendar days or less duration, shall be filled, whenever possible, by the senior qualified unassigned employee who is available and who has not performed eight (8) hours work on a calendar day; an unassigned employee will not be considered as being available to perform further work on vacancies after having performed five (5) days or forty (40) hours of work at the straight time rate in a work week beginning with Monday, except when such unassigned employee secures an assigned position under the provisions

"of Rule 33 or returns to the extra list from a position to which he was assigned, in which event he shall be compensated as provided for in Rule 20, Sections (b) and (c).

NOTE: 1. An unassigned employe placed on a vacancy or a new position having rest days of Saturday and Sunday will remain thereon until relieved by regular employe or displaced by a senior unassigned employe.

NOTE: 2. An unassigned employe placed on a vacancy or new position having rest days other than Saturday and Sunday shall, after having performed five (5) days or forty (40) hours of straight time work in a work week beginning with Monday, be released from the position only if by remaining thereon he would work in excess of five (5) days at straight time rate in his work week. An employe so released shall be privileged to return to the vacancy from which released at the beginning of the new work week if the vacancy is then filled by a junior unassigned employe, or he may displace any junior unassigned employe, or place himself available for subsequent vacancies. If no regular employe is available and an unassigned employe is used after having performed five (5) days or forty (40) hours of straight time work on vacancies in his work week beginning with Monday, he shall be compensated therefor at the overtime rate.

(c) If a qualified unassigned employe is not available, position will be filled by the senior assigned employe who makes written application therefor and is qualified for such vacancy, and when assigned shall take all of the conditions of the position;

"if a qualified unassigned employe thereafter becomes available he may not displace the regular employe filling the temporary vacancy unless he is senior to such regular employe.

- NOTE: 1. A vacancy under paragraph (c) of this rule will not be considered a vacancy available to an assigned employe unless it is known that the vacancy will exist for more than two (2) days.
- NOTE: 2. In the event a vacancy of known duration of more than two (2) days is filled by a regular assigned employe and a senior qualified regular assigned employe desires to displace the junior regular assigned employe working the position, he may, upon giving at least four (4) hours' notice, do so providing such displacement notice is made within fifty-six (56) hours from the starting time of the position after vacancy is first filled and the employe making the displacement shall be required to fill the vacancy at the beginning of the next tour of duty on the vacancy.
- NOTE: 3. Under the provisions of this section a regular assigned employe shall not be permitted to work a temporary vacancy, or return from a temporary vacancy to his regular assigned position, or work another temporary vacancy on the same calendar day."

While the Organization does not contest the Carrier's right to fill, or decline to fill a vacancy, the argument is made that the Carrier must choose between the two alternatives. Thus, if the evidence demonstrated that the work of the Assistant Head Timekeeper was not performed during the nine April work days identified in the claim, the

Petitioner would have nothing to argue about. However, the evidence in the record, argues the Organization, does not substantiate the Carrier position that the work was not done, but indicates the converse, i.e., the normal functions of the Timekeeping Section were performed during the absence of the incumbent, so that the incumbent's work was surely done.

The Board would observe that the Organization's reasoning in this matter is fully supported by the Carrier's admissions. The Carrier argued that in establishing the Timekeeping Section work force, "consideration was given to just how many positions would be needed to handle all the required work in a manner that no outside help would be needed to fill positions made vacant as a result of illnesses," etc. Thus the Carrier clearly concedes that the work of the Timekeeping Section went on as usual, because the duties of the absent Assistant Head Timekeeper were absorbed by other employees. It is also clear that there is no question that the Claimant duly asserted a written request to fill position No. 109 during the temporary absence of the incumbent, and demanded her rights under Rule 34(c).

There are numerous Awards of this Division which hold that temporary vacancies must either be blanked or filled, and that if the duties of the position are performed, the position is not blanked. Award 7034 (Carter); Award 7255 (Wyckoff); Award 14841 (Wolf); and Award 15459 (Kenan). The latter two Awards are between the parties involved in the instant case.

The applicability of the above Awards to the present case must be obvious: The Assistant Head Timekeeper has certain identifiable duties, which are distinct from Timekeeper duties, and which are required for the operation of the Timekeeping Section. If the Section functioned in the absence of an Assistant, it must perforce follow that somebody assumed the Assistant's distinctive duties. If such were assumed, the position was not blanked.

Rule 34 as set forth above must be deemed to constitute a mandatory procedure for the filling of short vacancies which exist. Management may, of course, decide whether or not a vacancy exists. But, in order to sustain the position that a given vacancy does not exist, the work involved must not be performed. Given the circumstances in this case, it must be concluded that the Carrier violated Rule 34(c) in not awarding an existing vacancy to the Claimant on the workdays falling from April 17 through April 29, 1968, inclusive. The Claimant must be made whole by receiving the difference in pay claimed for such days.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1979.

