

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22407
Docket Number MW-22173

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Illinois Terminal Railroad Company

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

(1) The Carrier violated the Agreement when it assigned and used Larry Pruden instead of Gary Hammond to fill a vacation vacancy of track foreman on the Northern District for the period June 7, 1976 through June 11, 1976, both dates inclusive (System File ITRR 1976-25).

(2) Mr. Gary Hammond be allowed the difference between what he would have received at the track foreman's rate and what he was paid as the occupant of a lower rated position during the period referred to in Part (1) hereof."

OPINION OF BOARD: The Foreman of District Gang No. 11 observed his vacation from June 7, 1976 to June 11, 1976. During that time the Carrier appointed Large Machine Operator Pruden to work the foreman position. Pruden held system wide seniority as a Large Machine Operator but held no track laborer seniority in the Northern District where District Gang No. 11 is located.

The filling of the foreman's position during his absence while on vacation falls within the purview of Article 12(b) of the National Vacation Agreement. Under that provision the absence from duty is not considered a vacancy but every effort to observe seniority must be made if the Carrier elects to fill the position. The real issue here is whether Large Machine Operator Pruden had seniority such as would permit the Carrier to use him to fill the foreman position consistent with the agreement provision that the Carrier make every effort to observe seniority. The introduction of the promotion rule (No. 7) into the dispute in the submissions is inappropriate in that neither a vacancy nor a new position is involved here.

The applicable rules in the instant matter are Rule 4(f) and Article 12(b) of the National Vacation Agreement:

"RULE 4 - Seniority

* * * *

(f) Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railroad as hereafter provided."

"Article 12

* * * *

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

When the Carrier moved to fill the vacation absence it was obligated to do so in accordance with the contractual arrangements between the parties. Under the Agreement the Carrier is required to fill the position on a seniority basis. Mr. Pruden did not hold track subdepartment seniority on the Northern District when he was used to fill a foreman's position in the Northern District. The fact that he was working with the gang on the Northern District by virtue of his system wide seniority as a Large Machine Operator did not vest him with track subdepartment seniority in the Northern District. The Agreement is clear that seniority is restricted to subdepartments and districts under Rule 5. The Carrier was obligated to use every effort to observe the seniority roster in the track subdepartment for the Northern District when it filled the position occasioned by the vacation absence. This it did not do and therefor violated the Agreement.

We find no fatal defect in the handling on the property as alleged by the Carrier.

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 30th day of May 1979.