

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22885  
Docket Number CL-22784

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8731)  
that:

1. Carrier violated the agreement between the parties when on each date of October 24, 25, 26, 27, 28, 31, November 1, 2, 3 and 4, 1977, it improperly used rotating extra board employee M. L. Haas.

2. Account violation of Article X of the December 1, 1969 Agreement and Article II-A of the Telegraphers' Schedule, Carrier shall now be required to compensate rotating extra board employee, M. L. Haas, an additional day's pay for each date of October 24, 25, 26, 27, 28, 31, November 1, 2, 3 and 4, 1977, at the rate of the agent/telegrapher's position at McBride, Missouri.

OPINION OF BOARD: The pivotal question before this Board is whether or not Carrier violated the Agreement when it relieved Claimant from the Telegrapher-Clerk's position at McBride, Missouri on October 21, 1977 and permitted Rotating Extra Board employee P. T. Stout to return to this vacancy on October 24, 1977 and to protect this vacancy until November 4, 1977.

Claimant contends that the vacancy for which Mr. P. T. Stout was called to protect from October 10, 1977 through October 14, 1977 was broken when he was relieved from this position and the job was blanked on October 17 and 18. He argues that this created a new vacancy at the time Claimant Haas was called to protect the position on October 19, 1977. He avers that after the establishment of these Boards in January, 1970, the first out rotating extra board was called for and allowed to remain on that position during its tenure.

Carrier, contrawise, argues that the organization has never challenged the practice of permitting a Rotating Extra Board employee who was called for a continuing vacancy to be removed for different periods of time, as long as he was returned to the original vacancy. It contends that this pattern of assignment is distinguishable from a situation where the employee is removed completely from the vacancy.

In our review of the case, we concur with Carrier's position. We do not find that the vacancy was terminated when the contested position was blanked on October 17 and 18. We find a continuing vacancy that commenced on October 4, 1977 and ended on November 4, 1977. In fact, this was acknowledged in the Claimant's submission. There was no break in the vacancy at McBride, Missouri and Carrier was not precluded from removing Mr. P. T. Stout for a short period of time, particularly, where as here, bona fide operational reasons dictated that he fill the Agency position at Chaffee. There were no Extra list or Rotating Extra Board employees available to fill this position. He was returned to the McBride vacancy on October 24 and protected this position until November 4, when the regular incumbent reported back to work. The record clearly shows that a continuing vacancy existed at McBride and was properly filled consistent with Article X of the December 1, 1969 Agreement, Article IIA of the Telegraphers' Schedule and the parties' consistent observance of this practice. For these reasons, we must 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

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 18th day of June 1980.