

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23059
Docket Number SG-23007

George S. Roukis, Referee

PARTIES TO DISPUTE:

{Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

On behalf of Signalman R. G. Millsap, Gang No. 1711, Wagoner, Oklahoma, for the time and one-half rate, addition to wages already allowed him during the period December 19 through December 30, 1977, because he was required to protect vacation vacancy of Signal Maintainer at Claremore, Oklahoma."

OPINION OF BOARD:

In our review of this case, we agree with the Organization that the basic fact patterns in Third Division Award 16498 are similar to this dispute. In both cases a regularly assigned signalman was removed from his bulletined position to protect a vacation vacancy, although the employee in Award 16498 was assigned to a different shift.

We agree, on the other hand, with the Board's decision in that case that Agreement Rule 407(c) was no basis for taking the signalman off his regular assignment, notwithstanding, his protestation, since the Rule by definition requires that the senior available employee assigned to a gang working on territory, where the vacancy occurs, must request it. It does not require in the absence of that clearly specified condition, that the vacancy must be assigned to the junior signalman. It simply allows the senior available employee to fill the vacation vacancy, if he so requests. It is a volitional alternative to Carrier's correlative prerogative to select an available employee of the same class covered by the Agreement. Thus Rule 407(c) does not permit Carrier to redeploy a junior employee assigned to a gang working on the territory of the Signal Supervisor, where the vacancy occurs. It does permit the senior available employee the option of exercising his seniority status, if he wishes to work the vacation vacancy.

In Third Division Award 16498, Article 12(b) of the National Vacation Agreement was never cited by the parties or considered by the Board. It was, however, raised in the instant dispute. We will quote it for ready reference.

"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, efforts will be made to observe the principle of seniority."

While it is arguable, under this provision, that a vacation vacancy might not be covered by Rule 407(c), since such absences from duty will not constitute vacancies under any Agreement, this question is not before us.

Careful reading of Article 12(b) reveals that when the vacation vacancy position is to be filled and a regular relief employee is not used, effort will be made to observe the principle of seniority. It does not preclude the assignment of another signalman to fill the vacation vacancy. We cannot consider Third Division Awards 4646, 6015 and 7346 relative to the suspension of work and the absorption of overtime, since they were never cited on the property during the claim's progression. The record does not show that Carrier failed to observe the seniority principle, as per Article 12(b) (Supra) when it assigned Claimant to the Signal Maintainers position at Claremore, Oklahoma for two weeks, when the incumbent of that position was on vacation from December 19 through December 30, 1977. It was consistent with Carrier's stated practice, that when no senior signal maintainers volunteered for a vacation vacancy position, the junior signalman would be assigned to fill it.

In Third Division Award 21014, involving an analogous fact situation on that portion of the Carrier, formerly comprising the T&P Railway, we pointedly noted the relevancy of Article 12(b) of the National Vacation Agreement. But in that case, unlike Third Division Award 16498, we were compelled by the parties arguments to consider the pertinency of Article 12(b). We stated, in part, that:

"The Organization's theory in these claims is that Claimant's temporary transfer to the vacation assignment was invalid and therefore he should be compensated for on the basis that the hours and conditions of his regular assignment were operative during all the days of the temporary work. After careful evaluation and study of all the rules cited by Petitioner, we must conclude that there is no rule support for Claimant's position.

"We note that in the Vacation Agreement in Rule 12(b), the last sentence reads: '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.' "

We held that: "We find that Carrier acted within the provisions of the Vacation Agreement in making the assignments herein, and there is no showing that Claimant was unduly burdened when he returned to his regular position, which had been blanked."

We concur with Claimant that Rule 407(c) does not require that the junior employee assigned to a gang working on the territory of the Signal Supervisor, where the vacancy occurs be assigned to the vacancy, if the senior available employee does not request it. But we find that Carrier was not estopped from assigning him to fill temporarily the vacation position, pursuant to Article 12(b), as long as it observed the principle of seniority. There is no showing that it did not observe this requirement. We will, 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

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 14th day of November 1980.