

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23376
Docket Number CL-23397

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9293) that:

(1) The Carrier violated the established practice, understanding, provisions and Rules of the Clerks' Agreement when it arbitrarily assigned the position of Agent-Saginaw to a junior employe (Milton E. Montgomery), to the exclusion of senior employe, Jeffery H. Oberbillig, who made request for the position in accordance with the Agreement.

(2) The Carrier shall be required to compensate Mr. J. H. Oberbillig eight (8) hours pay, per day, as Agent-Saginaw, for the following days: May 3, 4, 5, 8 and 9, 1979.

OPINION OF BOARD: Claimant seeks eight hours of pay per day for May 3, 4, 5, 8 and 9, 1979 alleging that he should have been assigned to the position of Agent-Saginaw on those dates.

The incumbent holder of the agency at Saginaw went on vacation leaving the position temporarily open for five days. The Carrier selected an employe with less seniority than the claimant to fill the position during May 3, 4, 5, 8 and 9, 1979. The junior employe had performed as a relief agent at Saginaw for one week in April, 1979. Between January, 1978 and March, 1979, claimant was regularly assigned to a freight agent position at Keenan Yard. The dispute has been properly progressed to this Board.

The Organization contends the Carrier violated Rules 12(b) and 12(c) of the working agreement when it assigned the junior employe to the temporary agency opening at Saginaw. Rule 12(c) gives furloughed employes the right to fill short vacancies on a seniority basis. According to the Organization, Rule 12(b) triggers the assignment preferences in Rule 8(a) requiring the Carrier to assign the most senior worker if he has sufficient fitness and ability to perform the duties of the position. Due to claimant's able performance of his duties as an agent at Keenan Yard for fifteen months, the Organization asserts claimant has amply demonstrated sufficient ability to perform the duties of Agent-Saginaw. On an ancillary issue, the Organization states the Carrier should have provided claimant with training at

Saginaw in April, 1979 since he (as well as the junior employee) had requested an opportunity to perform relief work pursuant to Supplement No. 5 of the working agreement. The Carrier's arguments are twofold. First, Rules 8 and 12 of the working agreement are inapplicable because Section 12(b) of the National Vacation Agreement specifically excludes temporary openings caused by a vacation from being construed as vacancies for purposes of assigning a replacement. Second, regardless of whether or not Rule 12(c) of the working agreement applies, the Carrier exercised reasonable discretion in determining that the claimant lacked the requisite fitness and ability to fill the agency at Saginaw. The Carrier argues that each agency position inherently involves unique duties so that the claimant was unqualified to replace the vacationing incumbent. Since the junior employee received training at Saginaw in April, 1979, the Carrier maintains it was justified in using the junior employee on the dates in controversy. Lastly, the Carrier asserts that its assignment of the junior employee to Saginaw in April, 1979 was not a violation of Supplement No. 5.

Section 12(b) of the National Vacation Agreement states:

"(b) As employees exercising their vacation privileges will be compensated under this Agreement during their absence on vacation, retaining 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." (Emphasis Added).

From the express language in Section 12(b), the opening at Saginaw for five days in May, 1979 due to the incumbent's vacation did not constitute a vacancy under the working agreement. Third Division Awards No. 22416 (Yagoda); Award No. 20 of Public Law Board 2035 (Seidenberg); But See: Third Division Award No. 7176 (Carter). Thus, the Carrier need not strictly follow the preference requirements in Rule 12(c) and Supplement No. 5 of the working agreement though the provisions of Rule 12(c) are sometimes consistent with the obligations imposed on the Carrier by Section 12(b) of the National Vacation Agreement. Third Division Award No. 14621 (Engelstein); Award No. 55 of Special Board of Adjustment No. 169 (Wyckoff). The Carrier has a duty to exert a genuine effort to observe seniority when assigning replacements under Section 12(b) of the Vacation Agreement. Third Division Award No. 22416 (Yagoda). However, the Carrier is given some latitude in filling vacation vacancies as long as it made an effort to observe seniority. The Carrier may properly consider other factors having a rational relationship to performance of the position. In this case, the Carrier decided not to strictly adhere to seniority because, in the Carrier's view, the junior employee was qualified and the claimant was unqualified to fill the Saginaw

position. From this record, we do not find sufficient proof that the claimant had sufficient ability to step into the Saginaw opening. The junior employe had worked at Saginaw and so he was qualified. Even though claimant performed as an agent at Keenan Yard, there is no evidence that he acquired sufficient ability to replace the incumbent at Saginaw. Thus, the Carrier did not abuse its discretion in filling the vacation vacancy with the junior employe.

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:



Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1981.