

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24771
Docket Number SG-24559

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company
(Western Lines):

On behalf of Leading Signalman L. E. Woodford for three and one-half hours at one and one-half times his regular rate of pay account Carrier used a junior employee for vacation relief work March 9, 1981. (Carrier file: SIG 148-323)"

OPINION OF BOARD: The pivotal question in this dispute is whether Carrier violated Article 12(b) of the Vacation Agreement and Rule 72 of the Signalmen's Agreement when it assigned Signalman J. G. Campbell to fill the Signal Maintainer's position during the incumbent's vacation period from March 9, 1981 through March 13, 1981.

Claimant contends that Carrier violated Article 12(b) when it assigned a junior employee to fill the vacation vacancy, contrary to the provision's seniority requirements. He argues that Carrier has not proven that he was singularly needed to perform other pertinent signal work on Signal Gang #17 during the time in question nor established that Article 12(b) requires the senior employee to request vacation relief work. He avers that Carrier is solely responsible for assigning vacation relief work and asserts that Carrier failed to implement this provision properly. Article 12(b) is referenced as follows:

"As employees exercising their vacation privileges will be compensated under this agreement during their absence or 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."

Carrier contends that careful analysis of Article 12(b) clearly reveals that Claimant had no demand right to perform the vacation relief work whenever he deemed himself available. It argues that whether or not Claimant was available to perform this work is immaterial since it possesses the managerial right to determine which employee will fill the vacant vacation position. It asserts that it complied with Article 12(b) when it assigned Signalman Campbell to fill the relief position since Claimant, albeit senior to Signalman Campbell, was needed to perform signal work elsewhere. It adduced several Third Division Awards to substantiate its interpretative position. (See Awards Nos. 8125, 10319 and 17146 et al)

In our review of this case, we agree with Carrier's position. In a long line of cases involving the interpretation and applicable of Article 12(b), the Board consistently held that the construction of this provision does not require that Carrier follow the principle of seniority in every instance when a regular relief employee is not used. As we stated in Third Division Award No. 10319, an employer has substantial latitude in applying the principle of seniority under this article. In the case before us, it was not impermissible for Carrier to assign Signaller Campbell to fill the vacant vacation position since Claimant was working on an assignment considered more important to Carrier. The supervisor of Signal Gang #14 had organized his work so as to have a person relieve the Signal Maintainer from the same gang which was not unreasonable or inconsistent with Article 12(b). Carrier has a right to determine its employment needs and priorities.

In Third Division Award No. 24283 involving the same Claimant, the same Carrier and the same provision, we found that Carrier did not violate Article 12(b) when it did not call and use Claimant on an overtime trouble call on March 24, 1980. Our decision in that case centered on the finding that Carrier would have had difficulty replacing Claimant if it had assigned him to perform the overtime work and the signal maintainer was already on the job when the overtime became available. The judicial principle in that case is equally applicable here and we will deny the claim. Carrier's discretion was consistent with the obvious and clear intent of Article 12(b).

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

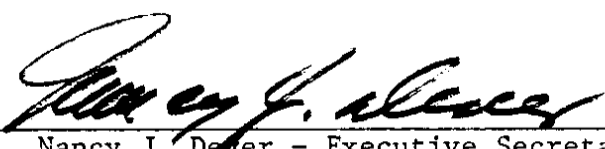
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984.