

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26214
Docket Number CL-26132

John E. Cloney, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9953) that:

1. Carrier violated the Clerks' Rules Agreement, and in particular Rule 9, when it denied Mr. M. D. Diehl's request to rearrange in force to the 8:00 a.m., Agent-Telegrapher position at Carthage, Missouri, beginning December 15, 1982. (Carrier's file 380-3818).

2. Carrier shall now be required to compensate Mr. Diehl eight (8) hours' pay at pro rata rate for December 15, 16, 17, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 1982 and January 1, 1983, total amount being \$1,480.67, as outlined in letter of claim dated February 1, 1983."

OPINION OF BOARD: Claimant was the regularly assigned Star Agent Telegrapher at Pleasant Hill, Missouri. D. J. Stephens was assigned as Telegrapher at Carthage, Missouri, 115 miles south of Pleasant Hills. Stephens was scheduled to take personal leave and vacation from December 15 to 31, 1982. Claimant requested to rearrange to the position for the duration of the vacancy under Rule 9(b). The request was denied and the position was protected by a clerical employee who was headquartered at Carthage. When Claimant inquired why his request was denied he was notified by M. A. Armstrong it was "Due to the needs of the service. . . ."

Rule 9(b) reads in part:

"Until an agreement is reached establishing an extra board, temporary positions and vacancies which Carrier elects to fill will be filled by rearrangement of the regular assigned employees giving senior employees their preference"

The Clerks Extra Board Agreement of the parties states:

"1.(a) Extra Boards are hereby established as listed in the attachment hereto for the filling of temporary vacancies and providing vacation relief on positions subject to the Clerks Agreements.

* * *

2.(b) In filling vacancies and providing vacation relief of five or more days duration, regularly assigned employees, including employees assigned to the extra board, may elect to rearrange pursuant to the provisions of Rule 9 of the basic agreement before applying the provisions of this extra board agreement."

(Carthage is one of the locations at which an Extra Board was established).

Carrier contends there would have been additional cost for meals, lodging and travel expense if Claimant's request had been granted, because someone would have to be sent to Pleasant Hill to protect that assignment. Carrier contends a vacation vacancy is not a vacancy and Carrier is not obligated to incur a greater cost in filling a vacation vacancy.

It bases this position on Article 12 of the 1941 Vacation Agreement, parts of which state:

"(a) Except as otherwise provided in this Agreement a Carrier shall not be required to assume greater expense because of granting of vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor
. . . .

(b) (vacation) absences from duty will not constitute 'vacancies' in their positions under any agreement. . . . "

Carrier also relies heavily on a June 23, 1981, letter to General Chairman Taggart from Director of Labor Relations Sayers regarding Rule 28 and Award No. 298 that:

"We have agreed, however, to one exception to this principle and that is, in the case of an employee requesting to fill a vacancy under Rule 9 (Oldheading) on a position away from his headquarters point will be considered eligible for the benefits provided in Rule 28 (on the Per Diem Agreement) provided Carrier would otherwise incur this expense in filling this vacancy.

This is being done in the interest of encouraging employees to request to oldhead vacancies and with the understanding that Carrier will not be liable for more expenses than will be incurred if the vacancy is filled under other rules of the Agreement."

Carrier further argues Rule 9 is general while the Agreement regarding vacations is specific and therefore prevails.

Finally, Carrier contends that even if a violation of the Agreement were to be found Claimant has suffered no loss and what is really being sought is a penalty.

The Organization points out that on the property it brought to Carrier's attention correspondence dated November 4, 1982, among Carrier Officials involved in this Claim discussing possible cancellation of certain "old-head" rights.

In that correspondence M. A. Armstrong, one of the two persons to whom Claimant addressed his original request, had written:

"The fact that the regularly assigned man, rather than the extra or furloughed clerk collects the per diem does not concern me, but the disruptive effect on the total work force causes me much concern. I have been told I have right to deny oldhead requests, but my experience has been that such denials are difficult to defend, and most often result in time claims, and always produces dissension, neither of which would be necessary if we would cancel a bad agreement"

This Board cannot agree with Carrier's position that Rule 9 is not applicable. The Extra Board Agreement specifically provides " . . . vacation relief of five or more days . . . employees . . . may elect to rearrange pursuant to . . . Rule 9." Whatever might be the merit of the argument that General Rules must submit to specific Rules, we conclude the language quoted is specific and clear. While an absence caused by a vacation does not constitute a "vacancy" because of Article 12 of the Vacation Agreement, the Extra Board Agreement provides methods for filling vacancies and for providing vacation relief. Surely that is what is involved here.

Believing as we do that Rule 9, and not the Vacation Agreement, governs this dispute, we are faced with the question of the propriety of sustaining what in effect is a Claim for damages. There are only limited circumstances in which this Board will grant such relief.

Here Claimant's request was made to a Carrier Officer who had only recently written his criticism of the practice of "oldheading" and urged cancellation of "a bad agreement," noting that denials of such requests were "difficult to defend." Shortly thereafter when Claimant made his request he nevertheless denied it. When Claimant asked why his request was denied this same Official responded on December 16, 1982, "Due to the needs of the service your request for exercise rights under Rule 9A is denied." There was no mention of the Vacation Agreement or of additional expense to Carrier. The question of additional expense in fact was not raised until March 17, 1983. We believe these circumstances require the Agreement be protected by sustaining the Claim as made.

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

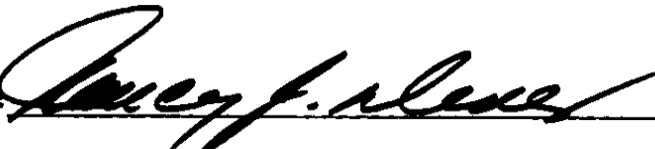
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.