

Organization File: 101-F-05-SLC  
Carrier File: CL-25-84

Proceedings Before Public Law Board 3929

Case No. 8  
Award No. 8

Parties to Dispute:

Brotherhood of Railway and Airline Clerks  
The Denver & Rio Grande Western Railroad Company

Statement of Claim:

Claim of the System Protective Committee of the Brotherhood that:

- 1) Carrier violated Rule 40 and other Rules of the current Agreement on March 26, 27, 28, 29, 30, 31, 1984, when it blanked a subsequent vacancy.
- 2) Carrier shall now compensate the senior furloughed Employee, that is not on a leave of absence, Ms. M. Kendall, eight (8) hours regular pay for March 26, 27, 28, 29, 30, 31, 1984, and;
- 3) Carrier shall be required to compensate Mr. L. Martinez eight (8) hours pay at the punitive rate in addition to regular pay he already received for March 26, 27, 28, 29, 30, 31, 1984.

Findings:

This Board upon the whole record and all the evidence, finds that:

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

This case stems from the fact that on March 26, 1984, the Agent-Telegrapher H. L. McFarland, at Geneva, Utah went on vacation for six days. The Employee who occupied the Cashier position at Geneva, Utah, O. R. Ferguson, filled the position of Agent-Telegrapher in the absence of Mr. McFarland. Mr. L. M. Martinez made written application to fill the Cashier position, however, since the Carrier had elected not to fill the Cashier position, Mr. Martinez' application was denied.

The Carrier maintains that its action was proper in blanking the Cashier position while the regular occupant of the Cashier position was filling the vacation vacancy of the Agent-Telegrapher. The Carrier maintains that it did not violate the language of Rule 40 as the Organization has maintained. The appropriate part of Rule 40 on this point reads as follows:

Rule 40

(a). Vacation vacancies on either telegrapher positions or Clerk positions shall be filled by the senior qualified regularly assigned telegrapher or clerk on a prior right basis making written application. The subsequent vacancies will be filled in accordance with the applicable rules. If no application is received, the vacancy will be filled by a Guarantee Extra Board Employee.

(d). Vacancies caused by a regularly assigned employee moving to a vacation relief assignment will be filled as provided in the Rules of the current Agreement except that regularly assigned employees may make application to fill a vacancy of ten days or less caused by filling the position of a vacationing employee and will be permitted to work the short vacancy without having to observe the rest days of either assignment provided in Items (b) and (c) above.

Carrier maintains Rule 40 is mandatory only as to how the position will be filled if it is filled. The Organization on the other hand maintains that the Rule is not permissive and requires the filling of any vacancy in accordance with the provisions of Rule 40. Carrier further maintains that there is nothing in the Agreement that restricts the Carrier from not filling a short or subsequent vacancy.

Opinion of the Board:

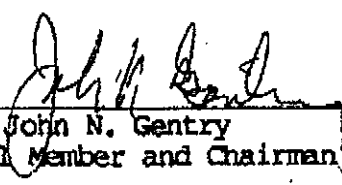
Numerous Boards of Adjustment on this property and others have held that rules setting forth the procedures for filling temporary vacancies cannot be construed as imposing an obligation on the Carrier to fill the vacancy. These same cases have noted that in the absence of a specific rule prohibiting the blanking of a temporary vacant position, the right of Management to do so is unrestricted. Since there is no provision prohibiting the blanking of such vacancies in the agreement between the parties, we find the claim unsupportable under the Rules.

Award:

Claim is denied.

  
John R. Jenkins, Employee Member

  
M. M. Kanderis, Carrier Member

  
John N. Gentry  
Neutral Member and Chairman

Denver, Colorado  
December 31, 1987