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AWARD NO. 1
NRAB DOCKET NO. CL-7776
CASE NO. 1
SSW FILE R-51-204-B-51
BRC FILE NR-27-32

SPECIAL BOARD OF ADJUSTMENT NO. 169

PARTIES } The Brotherhood of Railway and Steamship Clerks
TO }
DISPUTE } St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier violated the Clerks' current Agreement when it used an employee junior to relief clerk P. N. Ryan, Pine Bluff, Arkansas, in the filling of a temporary vacancy.

(2) That Relief Clerk P. N. Ryan be reimbursed at penalty rate of pay for nine hours and ten minutes at Check Clerk rate of pay for Friday, May 18, 1951, and for all subsequent dates until the violation is corrected.

FINDINGS: Claimant Ryan was regularly assigned to a Group 1 position and on one of his rest days there was a temporary vacancy in Group 1 in the same seniority district. One Murdock, who held no Group 1 seniority but who was regularly assigned to a Group 3 position, was used to fill the temporary vacancy in Group 1.

Claim is made that Ryan was available and ready for service on this extra work and should have been used even though it called for paying him time and one-half for that work, while Murdock concededly, if properly used under the agreement, could be used without the penalty rate of pay.

The agreement provides a fairly simple and unambiguous way for filling temporary vacancies. Rule 11-1(a) provides as follows:

"Furloughed or extra employees shall be used to fill a new position or temporary vacancy for which they are qualified and available, in accordance with their seniority. A furloughed or extra employee cannot claim extra work in excess of 40 hours in his work week if another such employee who has had less than 40 hours in his work week is available, except that if filling the assignment of a regular employee he may continue thereon taking the work week of the assignment he is filling. When a furloughed or extra employee takes the assignment of a regular employee, he assumes the conditions of such assignment, including the work week and rest days thereof."

Admittedly there were no furloughed or extra employees with Group 1 seniority who could be used to fill the position for which this claim is made. Rule 11-1(b) provides as follows:

"An employee holding Group 1 seniority and regularly assigned to a Group 2 or Group 3 position shall be used on a new position or temporary vacancy in Group 1, for which he is qualified, and makes application, provided no senior qualified furloughed or extra employee is available."

As stated above, there was no qualified furloughed or extra employee available and there was no employee holding Group 1 seniority regularly assigned to a Group 2 or Group 3 position.

A note to Rule 3 reads as follows:

"NOTE: The fact that seniority of employees does not begin until assigned by bulletin will not prevent use of employees who have not established seniority to perform extra work."

That note clearly permits Carrier to use an employee who has not established seniority in Group 1 to perform extra work in Group 1. Much contention has been made that the note does not apply to regularly assigned employees in Group 2 or Group 3 who have not established seniority in Group 1. The Board is unable to find any distinction being made between assigned and unassigned employees in Group 2 or Group 3 being used to fill a temporary vacancy in Group 1. The Board is of the opinion that within the agreement Carrier has not restricted itself in the use of Group 2 and Group 3 seniority men in performing extra work. It therefore follows that the Carrier was not restricted in using a Group 2 or Group 3 regularly assigned employee to fill a temporary vacancy on the Group 1 temporary vacancy that existed here.

AWARD: It is, therefore, the Award of the Board that the claim be and is hereby denied.

/s/ Frank P. Douglass
Frank P. Douglass, Chairman

/s/ W. E. Straubinger
W. E. Straubinger, Employee Member

/s/ L. C. Albert.
L. C. Albert, Carrier Member

Tyler, Texas,
March 5, 1957.