Award No. 4322
Docket No. 4110
2-P&LE-TWUOA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, A. F. of L. - C. I. O.

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current agreement, the carrier violated the controlling agreement and particularly Rule 34(c) as amended, when Car Inspector John Bacha was on September 5, 1960, denied the right to work on the vacation vacancy caused by Car Inspector Charles Herron being on his scheduled vacation September 5, thru September 23, 1960, inclusive.

(2) That accordingly, the carrier be ordered to compensate Car Inspector John Bacha in the amount of eight (8) hours at the time and one-half rate of pay of the position that he was denied to work on for Labor Day, September 5, 1960.

EMPLOYES STATEMENT OF FACTS: John Bacha, hereinafter referred to as the claimant, was employed by the Pittsburgh and Lake Erie Railroad Company, hereinafter referred to as the carrier, as a Car Inspector, (Carmen) at Struthers, Ohio.

Claimant was on the car inspectors extra board and for the period August 24 thru September 3, 1960, inclusive, was assigned to work on a third shift temporary vacancy due to a car inspector being on vacation. Effective Monday, September 5, 1960 car inspector Charles Herron, who held a regular second shift assignment, started on his scheduled vacation. Claimant Bacha prior to September 5, 1960 made a written request to the management to be permitted to work the vacation vacancy of Charles Herron beginning September 5, 1960, this request was denied to Bacha.

This dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The Agreement effective May 1, 1948, as subsequently amended, is controlling, and is by reference herein made a part of these statement of facts.

POSITION OF EMPLOYES: It is submitted that the carrier in the instant dispute violated provisions of the current agreement when they denied to the claimant the right to work on the vacation vacancy occasioned by Charles Herron going on his scheduled vacation effective September 5, 1960. Rule 34 (c) reads as follows:

> "Car inspectors and car inspector helpers may request temporary vacancies on other shifts. Where requested it must be granted, seniority to govern. Straight time to be paid where change of shift is necessary under this rule. The company not to be penalized account of any loss of time."

Rule 34 (c) definitely and clearly provides that employes requesting to work on temporary vacancies, including vacation vacancies, such request must be granted. This is a mandatory rule, it affords the carrier no right to deny to such employe his request to work on such temporary vacancy. There can be no question that the claimant requested the opportunity to work on the vacation vacancy that occurred September 5, 1960. Foreman Peters in his letter of October 18, 1960 clearly states that claimant Bacha "requested this vacancy in writing prior to September 5, 1960". In the same letter the carrier contends that the Vacation Agreement gives them the right to blank a vacation vacancy.

Under certain conditions it might be possible to blank a vacation vacancy, however, here we have a clear cut rule that provides in the event an employe request to work such a vacation vacancy, the request **must** be granted, further, the parties being fully aware of the provisions of the effective Vacation Agreement, did effective May 31, 1956 revise Rule 34 of the controlling work rules agreement and made explicit provisions that any temporary vacancy, **including vacation vacancy,** must be granted to an employe requesting to work such vacancy.

Further had the carrier been desirous of blanking the vacation vacancy of Charles Herron on Labor Day September 5, 1960, it could have done so by simply complying with Rule 3 (h) of the controlling agreement, which reads as follows:

> "It is understood that holiday work will be reduced to a minimum and further this understanding does not guarantee a five-day week where such holidays occur during the work week. Forty-eight (48) hours notice will be given to employe or employes when jobs are cut off in accordance with the above."

It is a clearly established principle that when there is a conflict between the vacation rules and the work rules, the work rules are controlling. This is clearly established in many Awards of this Board, in Award 1514, Second Division, in its Findings, the Board said, in part:

> "* * * the principle is well established that where—as here—there is a conflict between the Vacation Agreement and existing working rules the terms and conditions of the Rules Agreement control until such time as they are modified or changed through the medium of negotiation."

The following quotation is from Opinion of the Board, Third Division, in Award 4690:

"The Carrier contends that its action was justified under the National Vacation Agreement. This Board has consistently held that in an instance where there is conflict between the Vacation Agreement and the Rules Agreement, the terms and conditions of the Rules Agreement control, until such time as that Agreement is modified or changed by the parties thereto. The record shows that the Agreement has not been so modified and Claim (a) must be sustained."

Had the carrier availed themselves of the provisions of the controlling work rules, particularly Rule 3 (h), they could have properly blanked the vacation vacancy on Labor Day September 5, 1960, they should have assigned the vacation vacancy to the claimant, he would then have been the junior employe at the point, and in the application of Rule 3 (h) his position could have been cut off over the holiday. It is a matter of record that the carrier did on September 5, 1960, cut a certain number of assignments off for the holiday, see employes Exhibit "D". All in conformity with Rule 3 (h) of the controlling agreement.

The action of the carrier in this case is tantamount to having arbitrarily ignored all the foregoing fundamental principles of the collective controlling agreement and the carrier thereby inevitably assumed the burden of compensating the claimant therefore as set forth in the statement of dispute. Thus the denial to the claimant of his right to work on the vacation vacancy that existed on Monday, September 5, 1960, is untenable. Therefore, the statement of claim in its entirety is subject to be sustained by the Honorable Members of this Division. All data submitted in support of the Employes position has been presented to authorized representatives of the Carrier, and we believe they are fully aware of our position as herein set forth.

CARRIER'S STATEMENT OF FACTS: Car Inspector C. Herron was regularly assigned to Job No. 204, East End of Departure Yard, Struthers, Ohio, 2:00 P. M. to 10:00 P. M., Monday through Friday, rest days Saturday and Sunday and effective Monday, September 5, 1960, Inspector Herron began his scheduled three-week vacation. Claimant Car Inspector Bacha, who was assigned to the carmen's extra list at that location, requested the hold down on Inspector Herron's vacation vacancy under the provisions of Rule 34 of the carmen's agreement. On the morning of September 5th, Inspector Bacha was advised that he was awarded the hold down on Inspector Herron's assignment. At the same time he was advised that this assignment was being blanked for one day and he would not work that day. Inspector Bacha first worked this vacation vacancy on Tuesday, September 6th and continued thereon for the duration of Inspector Herron's vacation.

Claim was filed in behalf of Car Inspector Bacha requesting eight hours at the punitive rate for September 5, 1960, account of being denied the right to work the vacation vacancy of Inspector Herron on that date. The claim was denied with advice that the vacation agreement gives management the right to blank vacation vacancies when the existing work does not burden the remaining employes and that is what was done in this case.

The carmen's organization then progressed the claim through the various officers of the carrier designated to handle time claims and grievances in accordance with the appeals procedure of the carmen's agreement up to and including the Director of Personnel, the highest carrier officer so designated. The claim was denied at each level of appeal, the Director of Personnel under date of March 6, 1961, advising in part as follows:

"Investigation reveals that Mr. Herron's vacation vacancy was blanked on September 5, 1960, in line with the provisions of the Vacation Agreement, which gives the Carrier the prerogative of blanking vacation vacancies provided it does not create a burden on the remaining work force. In view of the foregoing, there is no basis for this claim and same is denied."

On April 5, 1961, International Representative Schawinski of the Carmen's Organization notified carrier's Director of Personnel that his decision as to Case Y-147 was not acceptable to the organization, and in due time the case would be processed to the National Railroad Adjustment Board, Second Division. Under date of October 2, 1961, the Second Division advised the carrier that written notice dated September 28, 1961, had been received from Mr. Schawinski signifying his intention to file an ex parte submission with this tribunal in connection with the instant dispute.

POSITION OF CARRIER:

CARRIER'S RIGHT TO BLANK A VACATION VACANCY IS PROVIDED BY THE NATIONAL VACATION AGREEMENT.

The carmen's organization on this property was not originally a party to the National Vacation Agreement, signed December 17, 1941, between certain Eastern, Western and Southeastern Carriers and their employes represented by the fourteen cooperating railway labor organizations. However, on March 9, 1942, the American Federation of Railroad Workers (CIO) then representing carmen on this property, and the carrier entered into a Memorandum of Agreement whereby it was agreed to apply the Vacation Agreement of December 17, 1941, to carmen, carmen helpers and apprentices on this property.

On February 23, 1945, a Supplemental Vacation Agreement was signed at Chicago, Illinois, by the parties signatory to the National Vacation Agreement of December 17, 1941. As a result of this Supplemental Vacation Agreement, the American Federation of Railroad Workers (CIO) and this carrier entered into an understanding on April 12, 1945, modifying the Memorandum of Understanding of March 9, 1942, to include the Supplemental Vacation Agreement, signed at Chicago, Illinois, February 23, 1945, effective with the calendar year of 1945, and to apply the Supplemental Agreement to carmen, carmen helpers and apprentices.

The Railroad Division, Transport Workers Union of America (AFL-CIO), subsequent successors to the American Federation of Railroad Workers and present representatives of carmen on this property, accepted the Memorandum of Understanding of April 12, 1945, and included it in the Carmen's Agreement as Item 7 of the Addenda when the agreement was revised effective March 1, 1956.

Article 6 of the National Vacation Agreement of December 17, 1941, reads as follows:

"The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

The carrier submits that this section of the National Vacation Agreement has direct application to the case involved herein in that it clearly provides that the carrier is not required to fill vacation vacancies when the work can be absorbed by the other employes on duty without undue hardship.

The organization, in progressing this case, has failed to establish the existence of any undue hardship upon the remaining employes as a result of the blanking of the vacation vacancy held by Inspector Bacha on September 5, 1960. It is carrier's position that no hardship befell the remaining employes that date, as the prospective business for the day did not warrant the assignment of another car inspector in the Youngstown District, thus it was not necessary to utilize the services of Inspector Bacha. Carrier further submits that it acted properly within the provisions of the Vacation Agreement in blanking the assignment on September 5, 1960, since the work did not necessitate the assignment of another inspector and no violation of the Vacation Agreement occurred.

A special rule having direct application to the facts in this case takes precedence over any general rule. This principle has been recognized in many Awards as can be seen from the following excerpts from a few such awards:

Second Division Award No. 3173—Referee Harry Abrahams:

> "The rules in the supplementary agreement when in conflict with the following rules, supersede and govern Rules 126, 140 and 141 in the Shop Crafts' Agreement, which were relied upon by the employes."

Fourth Division Award No. 1210—Referee William H. Coburn:

> "Second, by definition and construction, section (h) as a special rule applying to specific subjects is not susceptible of modification or qualification by the provisions of the general rule. As has been said many times, the special rule prevails over the general rule, leaving the latter to operate in the field not covered by the former. Here section (h), under this rule of construction, cannot be interpreted as coordinate with or subordinate to the provisions of section (b)."

Third Division Award No. 5636—Referee Herbert Wyckoff:

> "* * * A familiar guide to the construction of agreements gives a special rule controlling effect over a general rule. * * *"

RULE 34, RELIED UPON BY THE EMPLOYES, DOES NOT SUPPORT THE CLAIM.

In progressing the instant case to this tribunal, the organization has based its position on the contention that Car Inspector Bacha was not properly handled in accordance with the provisions of Rule 34 of the Carmen's Agreement. This rule has been quoted in the "Employes Statement of Claim," but for ready reference paragraph (c) of that rule, as amended by Memorandum of Agreement dated May 31, 1956, will be quoted herein:

> "(c) Car inspectors and car inspector helpers may request temporary vacancies on other shifts. Where requested it must be granted, seniority to govern. Straight time to be paid where change of shift is necessary under this rule. The company not to be penalized account of any loss of time."

Under the provisions of Rule 34 (c), a car inspector may request a temporary vacancy and where requested same must be granted, seniority to govern. Carrier submits that a review of the facts in this case will reveal that this rule was not violated but was complied with in every detail. Inspector Bacha requested the vacancy of Inspector Herron in writing and the request was granted, Inspector Bacha beginning his assignment on this vacancy on September 6, 1960.

Mr. Bacha was not "denied the right to work on the vacation vacancy occasioned by Charles Herron going on his scheduled vacation effective September 5, 1960," as contended by the Employes in their "Question" inasmuch as he was awarded Inspector Herron's vacation vacancy in accordance with Rule 34 and he worked this vacancy from September 6, 1960, until the completion of his assignment on September 23, 1960, the final date of Inspector Herron's vacation. Neither was Inspector Bacha's request to work this vacancy refused nor was he denied the right to work the vacancy.

Prior to the amendment of paragraph (c) of Rule 34 effective May 31, 1956 it read:

> "(c) Car inspectors and car inspector helpers may request temporary vacancies (except vacation vacancies) on other shifts. Where requested it must be granted, seniority to govern. Straight time to be paid where change of shift is necessary under this rule. The company not to be penalized account of any loss of time."

Attention is directed that the only change therein was elimination of the exception covering vacation vacancies; no change was made in the last sentence of this paragraph which now includes vacation vacancies and provides in the rule "the company not to be penalized account of any loss of time."

Inspector Bacha had requested to work a hold down on this particular position of his own volition under the provisions of Rule 34 of the Carmen's Agreement and without any guarantee that the vacation vacancy could not be blanked. In accordance with the last sentence of paragraph (c) of Rule 34, quoted above, the carrier is not to be penalized account of any loss of time which may be incurred by an employe exercising his rights under this Rule. Carrier submits therefore that by the specific language of the agreement, it is absolved of any liability in the instant case.

The attention of the Board is also directed to the fact that Rule 34 does not contain within its provisions any restriction upon the carrier with respect to blanking or retaining the position or positions involved on each of the days scheduled to work.

The organization, from the manner in which it has progressed this case to the Board, would appear to be in agreement with the carrier that Rule 34 does not contain within its text any penalty provisions, in view of the fact that they propose a conditional request to the Board when they state, "If so, shall J. Bacha, * * * be compensated eight (8) hours at punitive rate * * *."

It is carrier's position that Rule 34 was not violated in this case and Inspector Bacha is not entitled to the penalty payment requested.

CARRIER'S POSITION IS SUPPORTED BY AWARDS OF THE SECOND DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD.

The parties here involved have been before this Division on several prior occasions, as shown in the dockets described below, in cases involving the principle of carrier's right to blank an assignment when the work scheduled or contemplated for a particular day or trick was insufficient to warrant the retention of said position on the particular day involved. This is simply another case where the organization is attempting through a Board award to secure something which is not granted in the Schedule Agreement. In each of the dockets below, involving the above referred to principle, the claims were adjudicated in favor of the carrier. Docket 3534, Award 3781, involved a situation at Pittsburgh Passenger Station in which a regularly assigned car inspector position was vacant for one week due to the fact that the incumbent thereof was enjoying a one week vacation. On three of the five working days of that position, same was blanked and claim was filed by the organization in behalf of a car inspector assigned to the extra list on the contention that he was entitled to fill the position on the three days on which it was blanked. The claim was denied by this Division, with Referee Mortimer Stone participating. In its Findings the Board stated in part as follows:

> "Complaint is made because on two days the job of a vacationing car inspector was blanked and on another day the job of an inspector who laid off for the day was blanked instead of being filled from the extra board.
>
> "* * *
>
> "As to the first two days when the job of the vacationing employe was blanked, it appears that a vacation relief worker was not needed on those days and there is no showing that the blanking of the job on those days burdened other employes or the vacationing employe. They were properly blanked under Article 6 of the Vacation Agreement.
>
> "As to the third day, on review of the amount of work contemplated it was decided that it was not necessary to fill the assignment on that day and Rule 48 was not violated in blanking it."

In Docket 3150, Award 3339, the Board, with Referee Lloyd H. Bailer participating, held in part as follows:

> "* * * The carrier may elect to permit a position to be blanked when the regular incumbent is absent. The organization would have a valid complaint if it were shown that due to the blanking of a position, work exclusively reserved to a craft or class of employes covered by the agreement was improperly assigned to others. No such showing can be made in the instant case, however. * * *"

In Docket No. 3356, Award 3550, this Division again with Referee Mortimer Stone participating, denied the claim of the organization holding in part as follows:

> "* * * On the dates involved a regularly assigned car inspector reported off duty and carrier blanked the position on determining that there would not be sufficient work to warrant the use of an extra man.
>
> "The evident purpose of Rule 48 was to prescribe when employes from the extra board should be used instead of other employes,—

not to restrict carrier in its right to blank positions when there was no need for them to be filled. This same issue was decided in well reasoned Award No. 3339 of this Division."

The same principle was at issue in Docket 3355, also involving the same parties here involved, and in Award 3717 a denial of the claim was rendered by this Division.

Carrier's position with respect to the National Vacation Agreement contemplating the blanking of vacation vacancies when no burden is thrust upon the remaining employes is further supported by Award 2406 of the Second Division and Awards 5718, 5976 and 6142 of the Third Division, National Railroad Adjustment Board.

Award 2406, Second Division, involved System Federation No. 162, Railway Employes' Department, A. F. of L. (carmen) and the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company) in the following dispute:

"DISPUTE: CLAIM OF EMPLOYES:

"1. That under the current agreement the Carrier improperly applied Article 10, Section (b) by not filling vacation employe assignment while on vacation, and distributing more than the equivalent of twenty-five per cent of the work load of given vacationing employe, among remaining employes on the shift at Valentine, Texas.

"2. That accordingly the Carrier be ordered to fill vacationing employe's assignment in order not to distribute more than twenty-five per cent of work load on the remaining employes on a shift."

The case covered by Award 2406 involved the organization's contention that the Carrier allegedly violated the National Vacation Agreement of December 17, 1941, in granting a paid vacation to an employe of the carmen's craft without letting some other person occupy the vacationing employe's position while the latter was absent, although during such time additional help was not needed.

This Division, with Referee, denied the claim of the Employes, and in its Findings stated as follows:

"Because one of four carmen on the second shift at Valentine, Texas, took a vacation and no relief employe was provided, we are asked to infer that the three remaining employes were each burdened with one-third of his work. Such an inference would be valid only if the work required remained constant. If less work were performed the inference would not be appropriate. In the absence of evidence thereon the claim cannot be sustained."

The following excerpts are taken from the Opinion of the Board in the Third Division Awards cited above:

AWARD NO. 5718

"This record is lacking in proof for the allegation that Blankenship or the Assistant B&B Supervisor carried the responsibilities of Files during the latter's vacation. There are assertions to that effect,

but no proof that such duties performed by Blankenship exceeded the allowable percentage in the Vacation Agreement. Articles 6 and 10 (b) of the Vacation Agreement made certain provisions with respect to handling duties of vacationing employes. The record in the instant case does not justify a conclusion that the Carrier exceeded the latitude given in those provisions."

AWARD No. 5976

"There is no evidence of probative value to indicate any burden was placed upon the Foreman in charge of the gang, or any of the employes remaining on the job during Fowler's vacation period. The admitted fact is that no burden was placed upon Fowler on his return from vacation.

"We believe Rule 6 of the Vacation Agreement is the controlling rule in this case. The Employes have failed to meet the burden of proof which is on them with respect to Rule 6 of the Vacation Agreemento that, the Foreman of the gang, the workmen remaining on the job, were burdened during the period Fowler was on vacation, nor that Fowler was burdened upon his return from vacation."

AWARD 6142:

In its Opinion, after quoting Articles 6 and 10 (b) of the National Vacation Agreement, the Board stated:

"It is further contended that Carrier has always filled these positions and/or vacancies and that it should not now be permitted to break this custom or practice. The burden of showing the existence of a practice upon which reliance is placed rests upon the party asserting it. While we do not think this burden has been sustained, we shall assume, for the purpose of discussion, that it has. Practices under and Agreement are not controlling in the absence of a rule or rules relating to the subject matter thereof that are uncertain or ambiguous, either party is entitled to have them enforced. There is no uncertainty or ambiguity in the rules here involved."

CLAIM FOR PENALTY PAYMENT AT THE PUNITIVE RATE OF PAY IS WITHOUT AGREEMENT SUPPORT.

Without waving its position that the Agreement does not support the claim carrier further admits it must take exception to the request for payment at the punitive rate of pay for time not worked. Such claim cannot be supported by any rule in the current Carmen's Agreement. The right to perform work, if such right did exist in this case, **which the carrier contends it did not**, is not the equivalent of work performed. Rule 3 (a) of the Carmen's Agreement is consonant with this principle and reads as follows:

"(a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

The Second and Third Divisions of the National Railroad Adjustment Board have consistently recognized and adhered to the well established principle that the right to perform work is not the equivalent of work performed under the overtime and call rules of an agreement. These Divisions have repeatedly declined to render decisions awarding the punitive rate of pay for work not performed holding to the principle that the proper payment for time lost is the pro rata rate of pay.

In Award No. 3784 of this Division involving the same parties herein involved claim was filed by the organization in behalf of two men on the extra board account not having been used on certain specified dates. Claim was made at the punitive rate of pay for each of the car inspectors involved. The claim was sustained by the Board, however, the Award read: "Claim sustained at pro rata rate."

In Award No. 3552 of this Division, again involving the same parties here involved, claim was filed in behalf of two car inspectors for eight hours each at the punitive rate of pay due to two car shop men allegedly performing the work of car inspectors. In the Findings of this Division in Award No. 3552, it was stated: "Claimants' pay for the work lost should be at the straight time rate", and the Award of the Board sustained the claim on that basis.

Excerpts from additional awards of the Second Division regarding this same principle are shown below:

> **AWARD 3406:** "* * * A sustaining award is accordingly indidicated. Claimant asks payment for four hours at time and one-half rate. The proper rate of compensation for time not worked is the pro rata rate."
>
> **AWARD 3410:** "* * * The proper rate of compensation for work not performed is the pro rata rate."
>
> **AWARD 3444:** "* * * The claim as presented for electrician J. W. Benton requests compensation for the work lost at the overtime rate. The overtime rule has no application in this case, so we, therefore, order the carrier to compensate Mr. Benton for 12 hours lost to him because of the improper assignment of his work, at the pro rata rate."

See also Awards 3256, 3259, 3272 and others of the Second Division, as well as Award 3193 and numerous others of the Third Division, National Railroad Adjustment Board.

CONCLUSION:

The carrier has shown that when the regular incumbent of a position is absent on vacation, there is no obligation upon the carier to fill that position when, due to the blanking of the position, there is no hardship or burden cast upon the remaining employes. In the instant case, no undue hardship or burden was shown to exist and the carrier in blanking the vacation vacancy on September 5, 1960, acted within the rights granted under Article 6 of the National

Vacation Agreement of December 17, 1941.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As appears from exhibit in Employes' Submission of this claim, Car Inspector John Bacha, well before September 5, 1960, towit, on August 29, 1960, made a written request to the management to be permitted to work the vacation vacancy of Car Inspector Charles Herron, beginning on September 5, 1960. This request was made in writing pursuant to Rule 34c of the applicable agreement between the parties, effective May 1, 1948, which had been subsequently amended May 31, 1956, so that it no longer excepted vacation vacancies but permitted requests to work them, just as it provided for such requests as to other temporary vacancies.

Monday, September 5, 1960, was Labor Day. On the morning of that day, Inspector Bacha "was advised that he was awarded the hold down on Inspector Herron's assignment"—this, as contained in Carrier's Statement of Facts: further, it was there said that "at the same time he was advised that this assignment was being blanked for one day and he would not work that day" September 5th; also that "he first worked this vacation vacancy on Tuesday, September 6th and continued thereon for the duration of Inspector Herron's vacation."

In part here pertinent, Rule 3(h) reads:

> "* * * Forty-eight (48) hours notice will be given to employe or employes when jobs are cut off in accordance with the above."

On September 2, 1960, a bulletin was issued by management saying certain jobs would not work Monday, September 5, 1960, naming some twelve men concerned, but no mention was made in that or any other bulletin of blanking the job of Charles Herron, the vacation vacancy of which Claimant Bacha had already filed request to fill. As set forth in Rule 3(h) quoted above, the latter job also could have been cut off by giving forty-eight hours notice, but this was not done and, after being told he had received the assignment of the vacation vacancy of Charles Herron, Claimant received no previous notice at all, such as the rule provides, that the job was to be cut off that day.

Under the admitted facts of this case and the Agreement rules which control (See Award 1514), we are of the opinion that there was a violation thereof by Carrier in the situation here presented and that this claim should be sustained. And inasmuch as it may be assumed from the record that Claimant had reported ready for work on the morning of September 5th, when he was refused improperly the opportunity, it seems proper that he be paid for eight hours at the holiday rate of time and one-half prescribed by Rule 3(f), as requested in claim filed in his behalf by the Organization.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of October, 1963.

DISSENT OF CARRIER MEMBERS TO AWARD 4322

The record shows the vacation vacancy that claimant was holding down was blanked under the vacation rules of the agreement and that claimant performed no work on the date involved in this dispute.

The majority therefore have erroneously found claimant entitled to compensation. The majority have compounded the error in allowing pay at the time and one-half rate for work not performed.

There is a long line of awards on this and other Divisions of the Adjustment Board which provide that the proper rate of pay for work not performed is the pro rata rate. See, among others, the following awards of the Second Division: 3602, 3629, 3633, 3657, 3903, 3932, 4043, 4085, 4141, 4193 and 4229.

The award is erroneous and we dissent.

H. K. Hagerman
F. B. Butler
P. R. Humphreys
W. B. Jones
C. H. Manoogian