

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America
TO
DISPUTE: The Atchison, Topeka and Santa Fe Railway Company
- Coast Lines -

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster V. A. Casonova be allowed one day at appropriate yardmaster rate, plus meal period allowance, for August 2, 3, 4, 7 and 8, 1972 account being denied the right to protect yardmaster vacancy created on these dates.

OPINION OF BOARD: On August 1, 1972 Yardmaster McFall left his assignment to enter the hospital. It is the Organization's contention that when Yardmaster Brown was allowed to protect this vacancy, Article 4, Section 2 of the controlling Agreement was violated since when McFall left it was a vacancy of unknown duration and should have been protected on a day to day basis by claimant, the senior unassigned yardmaster available. Carrier, however, maintains that Trainmaster Johnson and Mr. Brooks, the Organization's Local Chairman mutually agreed that McFall would be off in excess of 5 days and thus his position would be filled per application of Article IV, Section 3 which enunciates the procedure for filling known vacancies of 5 days or more. Accordingly Yardmaster Brown was allowed to assume the vacancy.

There is no question that if Carrier knew on August 1, 1972 that McFall would be absent 5 days or more it was contractually proper to fill his vacancy in the manner it did. Yet more than the lay judgment of Trainmaster Johnson was needed to determine whether the vacancy would be in excess of 5 days. There was no medical evidence produced upon which Carrier could rely in concluding that the vacancy would be 5 days or greater. Trainmaster Johnson merely surmised that McFall's illness was serious and thus his absence would be lengthy. And it is irrelevant that in retrospect he was correct, as such determination must be based on facts as they existed at the time the vacancy arose. If Dr. Brown had stated on August 1, 1972 that McFall would be off work for at least five days, then the provisions of Article IV Section 3 could have been employed in filling his vacancy. But such was not the case.

Finally, Carrier cannot avail itself of an understanding reached by Trainmaster Johnson and Local Chairman Brooks since that understanding runs counter to the written collective bargaining agreement. That agreement provided the procedure by which McFall's position was to be filled and the Local Chairman could not alter it by reaching an understanding with Trainmaster Johnson. Article

4, Section 2 was violated and the claim will be sustained.

FINDINGS:

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

The carrier and the employe 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1975.