

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONReferee Lamont E. Stallworth Award Number 4454
Docket Number 4438PARTIES The American Railway and Airway Supervisors Association:
TO A Division of BRAC

DISPUTE: Southern Pacific Transportation Company (Pacific Lines)

STATEMENT It is the Claim and request of the Petitioning Organization that:
OF CLAIM:

1. Respondent Carrier violated the Agreement and, in particular, RULE 7, when it failed to utilize Supervisors Bianchini, Johnson, Welch and Recend, to cover vacancies at Roseville, California, on Positions No. 3115, 3105 and 3110, between February 22, 1984, and March 11, 1984.
2. Carrier be required to pay the following Supervisors, who were willing and entitled to be used to cover the vacancies, as follows:
 - J. A. BIANCHINI - One (1) days pay for each day February 22, 29, March 5 and 10, 1984.
 - J. G. JOHNSON. - One (1) days pay for each day February 23 and 24, 1984.
 - J. L. WELCH - One (1) days pay for each day February 27, 28, March 1 and 11, 1984.
 - J. P. RECEND - One (1) days pay for each day March 2, 8 and 9, 1984.

OPINION This Claim challenges the Carrier's right to go outside of the
OF BOARD: normal seniority lines to fill temporary vacancies created when
a new position arises. The Board concludes that nothing in the
contract prohibits this practice.

In the instant case the Carrier established a new position of Car Foreman at its Roseville Car Department and posted the Position (Job No. 3115) on February 17, 1984. The notice stated that bids would be accepted until February 24, 1984 and the new job would begin on February 27th.

On the same day the Carrier posted the job it sent a written notice to Employee B. J. Watson informing him that a Car Foreman's Position was available at that location. Watson had been reduced in rank from a Supervisor

during an earlier force reduction; he was working as a Carman at the time he received the notice at issue here. He accepted the Carrier's offer and filled a temporary vacancy in the new Foreman's Position for three days, February 22, 23 and 24, until the new vacancy was filled permanently by Claimant J. L. Welch.

When Claimant Welch took the new Position permanently, his old Position (No. 3105) opened up and the Carrier assigned Watson to that Position for five days until it was filled. The filling of that vacancy opened up a third one, which Watson also filled temporarily for an additional five days until he successfully bid for that job permanently.

At issue here is Rule 7(c) of the current Agreement, which states,

"SENIORITY

(c) Notification of new positions as Supervisor, and temporary or permanent vacancies occurring in regular Supervisor positions, will be sent to Supervisors on the Division or General Shop by appropriate Company Officer (except if such vacancy is known to be of less than thirty (30) days' duration). Assignments will be made as promptly as possible, and in filling such positions preference will be given to qualified Supervisors in the following order.

First: To Supervisors who are in service as such.

Second: To former Supervisors who have been
(a) cut off, or
(b) reduced in rank account force reduction."

The basic facts of this case are not truly in dispute. Although the Carrier suggests at some point that Mr. Watson was called back as a Supervisor before he was assigned to the Position in question, in fact his call-back was simultaneous with his new assignment. Therefore at the time the assignment was made, he clearly fell into the second category described in Rule 7(c), i.e., a Supervisor who had been reduced in rank because of a force reduction. The Carrier does not dispute the fact that the Claimants here fall into the first category, i.e., Supervisors who are currently in service.

The Organization contends that this section requires the Carrier to fill all vacancies with Supervisors who are currently in service, before recalling furloughed Supervisors. However, the Organization totally ignores the language within the Rule which creates an exception for vacancies known to be of less than thirty days' duration. In the instant case the bulletins

describing the vacancies also stated when they would be filled permanently. In each case the parties knew that the temporary vacancies would last less than thirty days. The Organization has offered no reason why this exception does not apply here.

The Board assumes that the Organization agreed to this language in the first place because of the practical problems created when a temporary vacancy arises. As this case amply demonstrates, it is easier and less disrupting to use one employe rather than five to fill the short-term vacancies created when a series of workers bid up into promotions. Furthermore, an employe is committed to protecting the hours of his regularly assigned position first and is not available to fill a temporary position if doing so would preclude him from protecting his own assignment. (Fourth Division Award Nos. 3556, 2991.)

Because the Agreement does not require otherwise, the Carrier was within its rights in assigning Watson rather than the Claimants to fill the temporary vacancies. Thus, the Claims must be denied.

FINDINGS:

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

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Bever
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1986.