

**PUBLIC LAW BOARD 5362**

Award No. 3  
Case No. 3

**PARTIES TO DISPUTE**

BUFFALO AND PITTSBURGH  
RAILROAD, INC.

- and -

UNITED TRANSPORTATION UNION  
(YARDMASTERS)

**STATEMENT OF THE CLAIM**

Claim and request that substitute Yardmaster T. R. Palumbo be allowed one day's pay at the Yardmaster pro rata rate of pay for December 31, 1992 account not being called to fill the vacancy on the second trick regular yardmaster position on the claim date.

**OPINION OF THE BOARD**

On the claim date, there was a vacancy on the second (2d) shift Yardmaster position at Butler, Pennsylvania since regular incumbent Moore was on vacation. The position was blanked, according to the Organization. The Carrier, in its initial declination concedes that:

The B&P closed second trick December 31, New Year's Eve, and no regular positions worked. The regular second trick Butler Yardmaster was on vacation.

Palumbo marked off sick at 8:23 a.m., December 31, 1992, and did not mark back up until 10:11 on January 2, 1993.

The Carrier agrees that it may not blank a position<sup>1</sup>, but:

In fact, no unassigned, substitute, or regular Yardmasters were available to fill this temporary vacancy. The Claimant, T. R. Palumbo was sick. He marked off to the crew caller at 0823 hours December 31, 1993, some seven and one half hours before the tour of duty in question, and did not mark back up for work until January 2, 1993.

Because of the fact that Mr. Palumbo was sick and unavailable for work, in it self, precludes the validity of his claim. Therefore the appeal is declined.

When Somerville was asked if he desired to work the assignment, he declined.

The Organization asserts that the decision to blank was made independently, and it used Palumbo's illness as an excuse, even though he was called for a trainman's position, when he had been told that he would work inside as a Yardmaster.

In its presentation to the Board, the Carrier advises that Palumbo was assigned to the position in question on December 31, 1992 pursuant to Article 15. (See our decision in Case No. 2) and he would have been eligible for holiday pay on January 1, 1993. But, he marked off sick. As a result, the Carrier had no choice but to allow the position to remain unfilled, as contrasted to a deliberate blanking. It concludes:

The simple fact that Mr. Palumbo was sick, and therefore unavailable for duty on the claim date, dictates that the claim is invalid. Whether or not the Carrier "blanked" the

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<sup>1</sup> The Carrier may not reduce a yardmaster's assignment to less than five (5) days per week except as provided in Article 4 (See Article 3 A)

position in this case is irrelevant. Simply stated, if the claimant had not marked off sick, he would have been paid. He would have been paid for the claim date even if he had not worked. But because he was unavailable, he was not paid.

This case presents two (2) rather conflicting concepts. Initially, the Carrier failed to fill the position on December 31, 1992 regardless of whether or not Palumbo was on the position in accordance with Article 15, or if it remained as Moore's assignment. That action was in violation of Article 3A. The Carrier makes its manpower determinations, and if it maintains a minimum force, it then assumes the risk in cases such as this, i.e. inability to locate and designate another employee in the event of an illness (a readily foreseeable circumstance). Thus, we find that there was a violation. However, we are not inclined to Award a day of pay to the employee who caused the problem in the first place. Stated differently, we will not award a day of pay to this Claimant who marked off sick prior to the start of the shift. We can find no basis for that type of an Award.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence, finds:

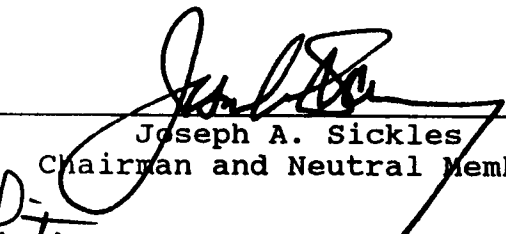
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


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

**AWARD**

1. The Carrier violated the Agreement when it "blanked" the position in question.
2. Due to the particular circumstances of this case, we will not Award pay to this Claimant.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
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SPENCER D. WHITE  
Carrier Member

  
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R. P. DEGENOVA  
Organization Member

6-8-93  
DATE