

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That the Carrier improperly applied the provisions of the Agreement effective May 14, 1948 between the parties, when it invoked the provisions of Section (b) of Rule 14 of the said Agreement in defense of their refusal to fill the positions of the following employes, located at Freight Office, East Cambridge, Mass., during the periods these employes were on their assigned vacation in the year 1948:

Name and Title of Position	Vacation Period
C. D. Sargent, Head Correspondence Clerk	July 6th through July 17, 1948
Alice Parr, Pick-Up and Delivery Clerk	July 12th through July 24, 1948
Katherine Foley, Allowance Clerk	July 12th through July 24, 1948

2. That the Carrier shall be required to hereafter fill such positions of employes while on vacation, in accordance with the intent and meaning of the terms of said agreement between the parties effective May 14, 1948 and the Articles of the National Vacation Agreement, dated December 17, 1941; the Supplemental Vacation Agreement of February 23, 1945, and the Interpretations thereto.

JOINT STATEMENT OF FACTS: Prior to May 14, 1948, no dispute existed between the parties with respect to the application of that part of Article 10 of the National Vacation Agreement, dated December 17, 1941, reading:

"* * * * However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employe can be distributed among fellow employes without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

Under date of April 30, 1948, a new Rules Agreement was signed between the parties effective May 14, 1948. In the Agreement between the parties effective prior to May 14, 1948, Section (b) of Rule 14 reads as follows:

"If the character of the work of a position is changed 33% or more for a period of twelve (12) working days or more, employes

medium of the Third Division. The Third Division has enumerated the principle many times that it is without authority to write new rules into an agreement. It should likewise decline to delete any rule of a controlling agreement. To sustain the claim of the employees would be to delete the second paragraph of Rule 14 (b).

The claim should be denied.

OPINION OF BOARD: This case comes to the Board upon a Joint Statement of Facts contained in a joint submission of the parties wherein they both fully set forth their respective contentions; hence same will not be restated here.

The Board finds that Rule 14 (b) does not modify or change the intended meaning or provisions of Article 10 (b) of the National Vacation Agreement, incorporated into the applicable collective Agreement through Rule 34, as amended effective May 14, 1948. The first mentioned rule does not apply when the work of a position is changed due to the assignment thereto of any or all work normally performed by an employee away on vacation; otherwise it has the same application as it did prior to the inclusion therein of the second sentence effective May 14, 1948.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier improperly applied Rule 34.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.