

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

The Carrier violated and continued to violate the Rules and provisions of the Clerks' Agreement, when,

(a) On June 15, 1952, and subsequent thereto, they worked Mrs. E. B. Cotton as relief on the position of Steno-Clerk in the office of Division Engineer at Jacksonville, Florida and failed and refused to compensate her at the rate paid the incumbent of said position.

(b) That Mrs. E. B. Cotton, hereinafter referred to as Claimant, and/or her successor(s) be compensated for \$1.34 for June 2, 1952, plus subsequent wage adjustments, and the same amount for each and every day that said Steno-Clerk's position works subsequent thereto, until such time as said position is bulletined as a permanent vacancy at the reduced daily rate.

EMPLOYEES' STATEMENT OF FACTS: On Monday, June 2, 1952, Claimant was assigned to work the position of Steno-Clerk, rate \$15.26 per day, in the Division Engineer's office at Jacksonville, Florida, while the incumbent was on vacation. Claimant had previously filled this position while the incumbent was on vacation during 1950 and 1951 for which she was paid the same rate of pay as the incumbent who was Mrs. F. P. Crumpler (formerly Mrs. Perkins). Mrs. Crumpler's vacation began on June 2, 1952 and she was to return to work on Monday June 16, 1952.

Claimant was not apprised of the fact that she would not receive the same rate of pay as was being paid Mrs. Crumpler and which she had received in 1950 and 1951, until she received, on June 16th, pay check covering her services for the first half of the month of June 1952. The check was based on a daily rate of \$13.92 or \$1.34 per day less than the daily rate paid the regular incumbent and the same amount less per day than she had received for filling the same position in 1950 and 1951.

Upon investigation Claimant developed that the check roll, or time sheet, had stated the correct rate of \$15.26 per day but the Auditor's Office had

vidual, namely, Mrs. Perkins, who for all intents and purposes remained Mrs. Perkins, notwithstanding she later, on December 6, 1949, married Mr. C. H. Crumpler. It was never intended that the higher rate of pay apply to anyone except the individual for whom it was negotiated and because of the reason stated in Carrier's Statement of Facts. If the special agreement had been intended to apply to persons other than the individual stipulated therein it certainly is reasonable to assume that provision therefor would have been made. Your attention is directed to the second paragraph of General Chairman Barber's letter of March 2, 1949, stating "We are agreeable for Mrs. Perkins' rate to be increased on a temporary basis, that is, so long as Mrs. Perkins remains on this position, and when vacated by her, will revert back to its former status or rate.", and the first paragraph: "... regarding the employee, Mrs. Perkins . . ." (Emphasis ours.) Thus it is clear that all reference to the increase in rate of pay mentions one individual, namely, Mrs. Perkins, and not others. The agreement does not state nor imply that others shall be paid the higher rate until the position is permanently vacated by the individual for whose benefit the increase was negotiated as alleged by the Organization.

As stated in Carrier's Statement of Facts (Mrs. Crumpler) vacated the position after working on Friday, May 30, 1952, and has not returned to it and in the meantime in accordance with General Chairman Younger's request, as set out in the third paragraph, last page, Carrier's Exhibit "D", the Carrier agreed to cancel the special agreement as of June 16, 1952, as indicated in the penultimate paragraph of Carrier's Exhibit "E". Moreover, the position of Steno-Clerk, Symbol No. 10, was bulletined on July 21, 1952 at the basic rate of \$13.12 per day (See Carrier's Exhibits "A" and "C") which was the authorized rate of the position. Division Chairman Bailey stated in his appeal of July 19, 1952 to Superintendent Bates, the following:

"With the receipt of this letter please be advised that claim is hereby filed for the present occupant of this position and/or their successors until such time as this position is bulletined at the reduced rate." (Emphasis ours).

The record discloses that the position of Steno-Clerk (Symbol No. 10) was bulletined at the reduced rate on July 21, 1952, which is persuasive that the Organization inferentially concedes that the position was vacated and accordingly renders null and void the expansion set out in Paragraph (b) of the Statement of Claim regarding "... bulletined as a permanent vacancy at the reduced daily rate."

The negotiated basic daily rate of pay for position of Steno-Clerk, Symbol No. 10, in the Division Engineer's office at Jacksonville, Florida, as of March 1, 1949 was applicable to any and all employees who might gain the position whereas the increased negotiated basic daily rate in accordance with the March 2, 1949 agreement was applicable to one and only one individual when that individual occupied the position but when vacated by this individual (Mrs. Perkins-Mrs. Crumpler) it simply reverted back to its former status or rate, as stated by Mr. Barber which in actuality took place on June 2, 1952. Consequently, there is no such unsettled dispute as alleged in Mr. George M. Harrison's notice of July 19, to Secretary Tummon with copy to General Chairman Younger and me. Moreover, the special agreement of March 2, giving rise to the dispute was cancelled upon request of the Organization representative as set out in the third paragraph, last page, of Carrier's Exhibit "D" and confirmed in the penultimate paragraph of Director of Personnel's letter of August 19, 1952 (Carrier's Exhibit "E").

All data used herein has been made available, discussed with or is well known to the Organization representative.

(Exhibits not reproduced).

OPINION OF BOARD: This claim arises from a letter agreement of March 2, 1949, wherein General Chairman T. F. Barber acknowledged his

understanding and agreement reached in discussions with Chief Engineer W. D. Simpson, the pertinent part of which follows:

"We are agreeable for Mrs. Perkins' rate to be increased on a temporary basis, that is, so long as Mrs. Perkins remains on this position, and when vacated by her, will revert back to its former status or rate.

It is understood that in increasing this rate on a temporary basis, this move will not constitute a precedent nor will the job be bulletined in so doing.

Thanks for this and other considerations granted by you personally.

Yours truly,

/s/ T. F. Barber,
General Chairman"

Claimant, Mrs. E. B. Cotton, took over the work of the position in question while Mrs. Perkins (later Mrs. Crumpler) was on vacation in 1950, 1951, and 1952. For the two vacation periods of 1950 and 1951, Mrs. Cotton was paid the same rate for this vacation relief work as the incumbent had received—i.e., \$15.26 per day instead of the regular rate of \$13.92. However, when Claimant Cotton received her pay check for the first half of June 1952, it was at the rate of \$13.92 per day rather than the higher rate paid to the incumbent. Since Mrs. Crumpler (the former Mrs. Perkins) was unable to return after her vacation, for reasons of poor health, Mrs. Cotton was asked to continue to fill the position of Steno-Clerk, Symbol 10, in Division Engineer's office and was paid at the lower rate rather than the higher one given to Mrs. Crumpler. This assignment Claimant accepted under protest.

In response to Mrs. Cotton's protest and her claim for the rate of the incumbent, the Auditor wrote her as follows June 30, 1952:

"Your letter of June 23 claiming shortage in your pay check for first half of June while employed as vacation relief on position of Steno-Clerk, Symbol 10, in Division Engineer's office relieving Mrs. Crumpler.

The rate paid Mrs. Crumpler is covered by a special agreement between the Seaboard and the Clerks' Organization and provides that only Mrs. Crumpler will be paid the differential of higher rate.

This means that if Mrs. Crumpler is absent, the relief employed to fill her position will be paid \$13.92 on the present scale instead of \$15.26.

H. A. Sharpe
/s/ HAS"

It is noteworthy that Mrs. Crumpler remained on the seniority roster for some time after the 1952 vacation period, from which she did not return for reasons of health; and when the position was bulletined July 21, 1952 as a "temporary vacancy" a lower rate for the position was listed.

Paragraph 10 (a) of the parties' Vacation Agreement of December 17, 1941, as amended, provides that:

"An employe designated to fill an assignment of another employe on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; * * *

It is obvious from the record that the special rate of \$15.26 was meant to apply to the position in question only for such time as Mrs. Perkins (Crumpler) was available to fill it. We see no other reasonable interpretation of General Chairman Barber's letter of March 2, 1949. Even though this was a personal rate, one might also interpret Paragraph 10 (a) of the Vacation Agreement as providing the same rate for Mrs. Crumpler's vacation relief. However, we see nothing in the language of the parties' Agreement which would require the Carrier to pay the higher rate to Claimant Cotton, or any other employee, for any period after the end of Mrs. Crumpler's vacation in 1952. Only Mrs. Crumpler could have claimed this special rate after her vacation period. And Mrs. Cotton could claim it only under the vacation relief provision. Thus, Claim (b) will be sustained only to the extent of affording Claimant Cotton the \$15.26 rate for that part of June 1952 which was covered by Mrs. Crumpler's vacation period, or any subsequent period wherein she may be called upon to take Mrs. Crumpler's vacation relief assignment, and for no other.

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:

The 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 Paragraph 10 (a) of the parties' Vacation Agreement was violated in refusing Claimant Cotton the higher rate of the incumbent for vacation relief assignment in June 1952.

AWARD

Claim (a) denied.

Claim (b) sustained to the extent set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of January, 1956.