Award No. 11089
Docket No. CL-10754

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, 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 the terms of the National Vacation Agreement:

(a) When, effective with the close of business, Friday, July 12, 1957, it temporarily cut off the position of Station Accountant at Clearwater, Florida, and re-established the same position by advertising it for bid as a vacancy on July 22, 1957, account the incumbent being assigned to take 10 days vacation from July 15 to July 26, inclusive.

(b) When it distributed more than the equivalent of twenty-five percent of the work load of the vacationing employe among fellow employes without hiring a relief worker and without agreement permitting a larger than the equivalent of twenty-five percent distribution.

(c) That C. W. Chandler and W. H. Nelson, Chief Clerk and Rate-Claim Clerk respectively, be paid 33 hours each at the punitive rate of the Station Accountant's position to cover the period of time the Station Accountant was on vacation. This to be in addition to amounts paid Claimants for the period July 15 to 26, inclusive, for work performed on their own position.

EMPLOYES' STATEMENT OF FACTS: The vacation schedule at the Clearwater, Florida, agency for the year 1957 reflected the following choice of dates by the clerical employes at that point.

C. W. Chandler (Claimant)	Chief Clerk	June 3 to 21, inc.
W. H. Nelson (Claimant)	Rate-Claim Clerk	July 2 to 13, inc.
A. Delaparte	Sta. Acct.	July 15 to 26, inc.

Accordingly, Clerks Chandler and Nelson took their vacations as scheduled and a vacation relief clerk was utilized to fill their positions during their absence.

It should be noted from the fact that no claim has been handled in behalf of Clerk Delaparte that Employes have not attempted to make a case on the basis of the position being improperly abolished or that the work of the position was improperly distributed to employes not covered by the Clerical Agreement. (Incidentally, the telegrapher employed at Clearwater did not make any overtime during the two weeks.) Their only contention has been that the Vacation Agreement prohibits the distribution of more than 25% of the work load of a given vacationing employe among fellow employes, and that in the instant case all of the work load of the position of Station Accountant was distributed to the other clerks.

Employes thereby overlook the very fundamental fact that when the position of Station Accountant was abolished, effective July 12, the vacationing employe, Delaparte, no longer had any work load to be distributed.

There was, therefore, no violation of either the schedule agreement or the Vacation Agreement.

In view of the fact that there is nothing in the controlling agreement which restricted the right of the Carrier to abolish the position of Station Accountant at Clearwater (that such position was reestablished two weeks after being abolished does not in any manner alter such fact), the Carrier respectfully requests that the instant claim be denied.

Carrier affirmatively asserts that all data used herein has been discussed with the General Chairman of the petitioning organization.

OPINION OF BOARD: Coincident with the Station Accountant at the Clearwater, Florida, agency departing on his two week scheduled vacation the Carrier cut off temporarily the position. One week thereafter the Carrier bulletined for seven days position of Station Accountant at the same agency. The position was awarded to the successful bidder who assumed the position August 5, 1957. During the vacation of the Station Accountant no vacation relief was furnished and the Chief Clerk and Rate Claim Clerk, the Claimants here, performed the duties of the position abolished.

It is contended by the Organization that the abolishment of the position was a subterfuge as it was for the purpose of avoiding effects of provisions of the Vacation Agreement. On the other hand, the Carrier asserts they have a right to abolish positions and assign the work remaining as efficiency and economy dictates. It further asserts that the work at the Clearwater, Florida, agency declines during the summer months and in anticipation of such falling off of work it abolished the position; it was only coincidental that the volume of work continued in such volume that the position had to be restored and the period of the abolishment was co-extensive with the Station Accountant's vacation.

Certainly the Carrier has the right to abolish positions and re-arrange the work in as economic manner as possible consistent with the terms of the governing agreement. And it is also well established that effect must be given to all the terms of agreements by which the parties are bound. Rights under the agreement may be exercised for proper purposes, but when such exercise has the effect of nullifying a provision of the agreement it should be subject to careful scrutiny. Here the quick rebulletining of the position suggests that re-arranging the work may not have been the primary purpose of abolishing the position. Particularly, when the record shows that at the time the job was abolished there was not

a material diminution of the work. If the purpose was to avoid the employment of relief for the vacation vacancy, then it was improper, and the abolishment becomes invalid insofar as it defeats the positive provisions of the Vacation Agreement. From the record we believe this conclusion is reasonable.

The work of the Station Accountant while on vacation devolved upon the other two clerical positions. The record is not clear as to the volume of this work, but it was up to the Carrier to show that not more than approximately 25% of the work fell to the other clerks. On the other hand the record shows that approximately the same number of items were handled during July as in the previous month, and the Carrier admits that considerable overtime resulted. We therefore conclude that pursuant to Articles 6 and 10(b) of the Vacation Agreement a relief worker should have been provided.

However, no claim is made by or on behalf of such employe. The Claimants here were fully employed and compensated for their time. Furthermore, we can find nothing in the record to prove the basis for the claim of "33 hours each at punitive rate of the Station Accountant". There being nothing in the record to support the item (c) as stated in the claim, the Board has no recourse but to deny this item.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained for items (a) and (b)

Claim denied as to item (c).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1963.