

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, A. F. L. - C. I. O.**

DONORA SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Request that K. Schmalbach be paid at the time and one-half rate of pay for each hour worked as shown below: June 15—3 hours; July 8—3 hours; July 9—3 hours; July 10—3 hours; July 13—3 hours. On these dates Allan Farquhar, Storekeeper, performed the duties of the regular relief clerk, while Kenneth Schmalbach who is the regular relief clerk was not used in accordance with his job description as shown on Page four of the Clerks Agreement, last paragraph of Rule 2-2-E.

EMPLOYES' STATEMENT OF FACTS: This claim arose at Donora, Pa., and is known as Clerks Claim #5-59.

That on the days in question Clerk K. Schmalbach did hold the position of Relief Clerk.

That Allan Farquhar, Storekeeper, performed work that should have been done by the Relief Clerk and thereby violating the present agreement Rule 2-2-E.

That the Railroad Division, Transport Workers Union of America, AFL-CIO does have a bargaining agreement, effective July 16, 1953 and revised October 1, 1957, covering the Clerical, Office, Station and Storehouse employees of the Donora Southern Railroad Company, copies of which are on file with the Third Division, National Railroad Adjustment Board and is by reference hereto made a part of these Statements of Facts.

POSITION OF EMPLOYES: That Clerk K. Schmalbach did hold the position of Relief Clerk and that the carrier violated the agreement when the carrier used Allan Farquhar, Storekeeper to fill a job that should have been filled by Relief Clerk K. Schmalbach.

That Relief Clerk K. Schmalbach should be paid the time and one-half

vacancies. It can be no concern of his how the work he formerly performed was accomplished while he was properly filling a vacancy on another position. Due to the dual nature of his assignment, the miscellaneous duties he performed when not filling a vacancy were not a part of his assigned duties when he was filling a vacancy; and the fact is that they were performed by another clerical position without requiring overtime work. Clerical positions do not have strict work assignments. When vacancies or new positions are advertised the job description is prefaced by the words "preponderant duties." In addition Rule 13, "Preservation of Rates," expressly permits the temporary assignment of clerical employees to perform work on other assignments, as was done with the Storekeeper in this case. If, as conceded by the Organization, the claimant could have taken the disputed work with him while filling a vacancy on another position there could be no valid objection to permitting another fully covered position to perform that work while claimant was filling other vacancies. Claimant, the "General Relief Clerk" was used strictly in accordance with Rule 2, 2(e) which provides that he "will work vacancies however created, if available."

For the foregoing reasons, it is respectfully submitted that this claim be denied.

OPINION OF BOARD: Claimant held the position of General Relief Clerk. On June 15, 1959, Claimant filled a vacancy of another clerk who was absent from his position that day; on July 8, 9 and 10, 1959, Claimant filled a *vacation vacancy of a Yard Clerk*; on July 13, 1959, Claimant filled a vacancy of another clerk who was absent from his position.

On each of the days above mentioned, a Storekeeper covered by the Agreement performed the work assigned to Claimant when he was not filling a vacancy.

No work was suspended on either position.

A similar claim, involving the same parties, was denied by this Division of the Board in Award 11655. The principle therein enunciated is affirmed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1964.