Award No. 14622
Docket No. CL-13639

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5257) that:

(1) Carrier violated the National Vacation Agreement and the Clerk's Agreement at Clearing, Illinois, when it failed to fill M. Kostohry's Cashier position during the time she was relieving Chief Clerk E. Wichlinski who was on vacation during the period July 17, 1961 to August 6, 1961.

(2) Claimant M. Kostohry shall now be compensated an additional day's pay at the rate of her Cashier position for each work day July 17, 1961 to August 6, 1961, or a total of fifteen (15) days.

EMPLOYES' STATEMENT OF FACTS: Claimant M. Kostohry is the incumbent of Cashier position. Her position among others, is located in the Carrier's Agent's Office Accounting Department, with assigned hours of 8:00 A. M. to 5:00 P. M. and is designated by the Carrier as a five day per week assignment under the Forty Hour Week Rules of our Agreement.

Mr. Wichlinski is the Chief Clerk in Carrier's Accounting Department. His position is also designated by the Carrier as a five day per week assignment with assigned hours of 8:00 A. M. to 5:00 P. M.

Mr. Wichlinski was on vacation beginning July 17, 1961. He returned from his vacation and resumed his position on August 7, 1961.

During the time Mr. Wichlinski was absent on his vacation his position of Chief Clerk was required to be filled by Miss M. Kostohry, who is regularly assigned to the position of Cashier.

During this same period of time Miss Kostohry's position was blanked, that is, it was not filled.

OPINION OF BOARD: Claimant M. Kostohry, occupant of Cashier Position No. 204 of the Office Accounting Department, was used to perform the duties of Chief Clerk Position No. 283 while the occupant E. Wichlinski was on vacation July 17, 1961 to August 6, 1961. During this period Miss Kostohry's position was not filled.

She claims violation of Rule 6 and 10 (b) of the National Vacation Agreement of December 17, 1941 as well as violation of the Clerks' Agreement and requests an additional day's pay at the rate of her Cashier's position for each work day of the period July 17 through August 6.

Carrier denies the claim with the assertion that Miss Kostohry was properly advanced to the Chief Clerk position during his vacation and was properly compensated at the Chief Clerk rate. It also states that no relief worker was required on the Cashier position and that it did not violate Article 6 of the National Vacation Agreement. It alleges that this rule does not oblige Carrier to provide vacation relief for a position unless the lack of vacation relief would create an undue burden for the employe returning from vacation. Furthermore, it argues that Article 10 (b) of the National Vacation Agreement permits the assignment of up to 25 per cent of the work of the vacationing employe to others.

The record reveals that Carrier stated in a letter dated September 22, 1961, "Miss Kostohry was not assigned to Mr. Wichlinski's position while he was on vacation." On November 22, 1961, Carrier wrote, "During that period of time Clerk M. Kostohry. regular incumbent of Cashier's position No. 204, performed the preponderance of the work of position No. 204 plus no more than two hours of work of position 283 The balance of the work of position No. 283 was left to accumulate for the return of Mr. Wichlinski."

However, a joint check made on January 22, 1962, established that Cashier Kostohry was assigned to Clerk position No. 283 during Mr. Wichlinski's vacation, and that she also spent part of the time, about one hour per day, performing work of an urgent nature in connection with Cashier position No. 204.

From these facts it is apparent that Miss Kostohry did perform the duties of the Chief Clerk while he was on vacation and that she continued at the same time to perform the urgent duties of her regular position. By providing a relief worker for the Chief Clerk, no burden was placed upon Mr. Wichlinski when he returned to his job following his vacation. However, since Miss Kostohry's regular Cashier position was not filled, an increased work burden was placed upon her during and after the period July 17 through August 6, 1961.

In his interpretation of Article 6 of the National Vacation Agreement, Referee Morse, said,

> "The sentence obligates the Carriers to provide relief workers to perform the work of an employe while he is on vacation if his work is of such a nature that it cannot remain undone without increasing the work burden either of those employes remaining on the job or of the employe when he returns from his vacation."

Referee Morse's interpretation applies to the case at bar. Also Special Board of Adjustment No. 167, Award No. 5, and a number of other awards express the same principle. We hold that Carrier was required to furnish vacation relief for the Cashier position while the occupant was temporarily assigned to another position and that its failure to do so was a violation of

Article 6 of the National Vacation Agreement. Claimant is entitled to compensation as set forth in paragraph 2 of the Statement of Claim.

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 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; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June, 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14622, DOCKET CL-13639 (Referee Engelstein)

The decision is based upon an erroneous finding that "an increased work burden was placed upon her during and after the period * * *." The record does not support this finding. The organization did not even allege that anyone was burdened by this arrangement during the handling on the property. (R., pp. 16 through 29.)

Aside from the fact that this was an entirely new issue and should not have been considered for that reason, there was no "burden" placed on claimant, and particularly not as Referee Morse interpreted the meaning and intent of the word in Article 6 where he found: "The word 'burden' as used in Article 6 is a verb and means to overtax or oppress," and agreed with Carrier's statement ' * * * that a man is not burdened so long as he is reasonably able to do the work, * * *" (Vacation Agreement and Interpretation page 78). There isn't even a hint in this record that claimant could not reasonably perform the work.

The Majority found claimant spent "* * * about one hour per day, performing work of an urgent nature in connection with Cashier Position No. 204," contrary to claimant's own statement that she performed "* * * certain duties of position No. 204 on 20 or 25 per cent of the days involved; she further pointed out no more than one hour per day, on such days, was spent * * *." The General Chairman reiterated she was required to perform "* * * certain work attached to her position in the amount of one (1) hour per day for approximately 20 or 25 percent of the days involved." (R., p.9.) Obviously, only an average of a maximum of 10 to 15 minutes per day was used by claimant. Compare this 10 to 15 minutes per day, or one hour per day every 4th or 5th day, with the 2 hours permissible daily under Article 10 (b).

Carrier's action was in accordance with the agreement and the claim should have been denied.

Award 14622 is in error, and we dissent.

W. M. Roberts
G. L. Naylor
C. H. Manoogian
R. A. De Rossett
H. K. Hagerman

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO AWARD 14622, DOCKET CL-13639

The decision in Award 14622, Docket CL-13639, is quite correct and no error is apparent.

Perhaps the record needs to be more fully set out.

Carrier's first response to the claim asserted (R p. 17) that Claimant did not work the Chief Clerk position No. 283. Then (R p. 20) Carrier asserted that Claimant "* * * regular incumbent of Cashier's position No. 204, performed the preponderance of the work of position No. 204 plus no more than two hours of work of position 283. The balance of the work of position No. 283 was left to accumulate * * *." Thereafter (R p. 34) Carrier stated "* * * A vacation relief worker was needed during the Chief Clerk's absence on vacation. The Claimant (Kostohry) was assigned and did fill the Chief Clerk's position as a relief worker and was compensated therefore at the Chief Clerk's rate. No burden was placed on the Chief Clerk (Wichlinski) when he returned to his job following his vacation period."

As set forth at Record page 7 and paraphrased at Record page 43 the Employes pointed out that:

> "The question to be decided in this case is whether or not the Carrier violated the National Vacation Agreement of December 17, 1941 and the Rules Agreement, effective September 1, 1949, by blanking Claimant's Cashier position and requiring her to suspend work on her regularly assigned position to work the Chief Clerk position during his vacation absence."

Enough is shown herein to state as a fact that 100% of the vacationing employe's work was performed by Claimant who, in addition, had to perform that work of her own (Cashier) position which could not be left to accumulate until the Chief Clerk returned leaving the remainder to be performed after the Chief Clerk's return.

The record contains prima facie evidence of those facts and the Award is quite correct in holding that Carrier violated the Agreement in not furnishing proper relief for the Cashier position in accord with Referee Morse's interpretation and Award No. 5 of Special Board of Adjustment No. 167 as well as others.

The dissent does not detract from the soundness of the Award. The fact that Carrier was unable to evade the Agreement, by reversing itself, should have furnished no cause for dissent.

D. E. Watkins
Labor Member

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