

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20056
Docket Number CL-20000

Irving T. Bergman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The New Orleans Terminal Company

STATEMENT OF CLAIM: Claim of the system **Committee** of the Brotherhood (GL-7186) that:

(a) Carrier violated the provisions of Article 6 and Article 10
(b) of the Vacation Agreement of December 17, 1941, as amended, at New Orleans Louisiana when it failed to provide proper relief for Mr. R. J. Gray, Chief Clerk to the Superintendent.

(b) Mr. Gray shall now be **compensated** at the time and one half rate of pay for each of the dates July 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, and 31, 1970, **a total** of fifteen (15) days.

OPINION OF BOARD: The herein Claim **arises** under the **application** of Article 6 and Article 10 (b) of the National Vacation Agreement of December 17, 1941, as amended. During ~~the~~ period July 13 - 31, 1972 inclusive, the Chief Clerk to the Superintendent at New Orleans, Louisiana, was on his scheduled vacation. His position was **not** filled with a vacation relief worker as that term is defined in the National Vacation Agreement. Approximately five (5) hours work per day of the Chief Clerk's position was performed during the vacation period by Mrs. G. H. **Guion**, a Clerk-Stenographer. The Clerk-Stenographer position is the only other **position** in the same office with the Chief Clerk.

Article 6 of the National **Vacation** Agreement provides:

"6. The Carriers will **provide** vacation relief workers but the vacation system shall **not** be used as a device to make unnecessary jobs ~~for~~ other workers. **Where** a vacation **re-** relief worker is not **needed in** a given instance and if failure to provide a vacation **relief** worker does not burden those employees remaining on ~~the~~ job, or burden the employee after his return from **vacation**, the carrier shall **not** be required to provide such relief ~~worker~~."

Article 10 (b) of the National **Vacation** provides:

"(b) Where work of **vacationing employees** is distributed among two or more **employees**, such employees will be paid their own respective rates. However, not more than the equivalent of twenty, five **per cent** of the work load of a

"given vacationing employee can be distributed among fellow employees 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."

We have examined many Awards of this Division that hold that it is an Agreement violation to distribute more than twenty-five per cent, of the work load to other **employees** while an employee is on vacation. See Awards 19233 (O'Brien), 18786 (**Devine**), 18433 (**Ritter**), 17843~ (**Devine**), 16921 (McGovern) and the Awards cited therein.

In this dispute the record demonstrates that five-eighth (**5/8ths**) (or **62-1/2%**) of the Chief Clerk's work was performed by the Clerk-Stenographer while the Chief Clerk was on vacation. This disposition of the work to one employe without using a vacation relief employe violated **Article** LO (b) of the National Vacation Agreement. We will sustain part (a) of **the** Claim.

With respect to part (b) of the Claim, we note that compensation is claimed by the Chief Clerk who was on vacation. Our review of all of the **Awards** wherein a violation of Article 10 (b) was found indicates that the **claims** presented in these prior decisions were presented on behalf of the employe performing the work, not the employe who was on vacation. No authorities have been cited where claim was made and sustained on behalf of the employe who was on vacation. Accordingly, while holding that the Agreement **was** violated, we will not depart from our prior holdings and award compensation to the employe that was on vacation. Part (**b**) of the Claim will be dismissed.

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 dispute involved herein; and

Claim (a) will be sustained. Claim (b) will be denied.

Award Number 20056
Docket Number CL-20000

Page 3

A W A R D

Claim (a) sustained as indicated in the Opinion;

Claim (b) dismissed as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **14th** day of December 1973.