

NATIONAL RAILROAD ADJUSTMENT BOARD

'THIRD DIVISION

Award Number 23441  
Docket Number CL-23430

Joseph A. Sickles, Referee

PARTIES TO DISPUTE

(Brotherhood of Railway, Airline and St&A Clerks,  
(height Handlers, **Express** and Station **Employees**  
(  
Maine Central Railroad Company  
I Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood**  
(GL-9271) that:

1. **Carrier** violated the current **Clerks' Agreement** dated March 1, 1953, as amended, when It used a **junior employee to fill and cover a vacancy** on the first **trick, yard clerk's** position Saturday, May 28, 1977, in its yard at Bangor, Maine.

2. **Carrier** shall **compensate** claimant, H. W. **Pomeroy**, eight (8) hours' pay at punitive rate, yard clerk's position, Saturday, May 28, 1977, rated \$52.4148 per day.

OPINION OF BOARD: First shift Yard Clerk (**Spellman**) was on vacation on May 28, 1977. The other first shift Yard Clerk, (**Hartery**) was instructed to cover **Spellman's** position.

Although both **Spellman** and **Hartery** work on the second floor in the tower, from 7:00 a.m. to 3:00 p.m., **Spellman** receives \$52.4148 per day, whereas **Hartery** receives \$50.04.

The Claimant (**Pomeroy**), who is a senior **employee**, was not called to cover the vacancy, and the Organization asserts that said failure results in a violation of certain specified provisions of the agreement.

On the day in question, the Claimant. was on his rest day.

The Organization has relied upon Article 10(b) - among **others** - of the **agreement**:

"ARTICLE 10

(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 employe can be distributed among fellow employes 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."

The Carrier denies that that rule is applicable to these circumstances because the job duties on Saturdays at the Yard Office are common to both clerk assignments. Moreover, the Carrier notes that under Article K(b), employee exercising vacation privileges, when absent from duty, do not create "vacancies" in their positions under the agreement. In any event, that section of the agreement only requires that "an effort" will be made to observe the principle of seniority.

Under the record of this case, we are unable to find that there was a violation of the agreement when a regular incumbent of a position performed the work on the day in question, even though the other Yard Clerk was away from his duties because of vacation. Accordingly, we will deny the 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 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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY Order of Third Division

ATTEST:

*A. W. Paulson*

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981

