Award No. 8841
Docket No. CL-8495

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

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

CENTRAL VERMONT RAILWAY, INC.

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes on the Central Vermont Railway, Inc., that the Carrier violated Article 6 of Vacation Agreement of December 17, 1941, as amended, when it failed to provide vacation relief workers May 16 to 20, 1955, dates inclusive, and May 23 to 17, 1955, dates inclusive, also on June 20, 1955, and further violated Section (b) of Article 10 of said Agreement by distributing more than the equivalent of twenty-five (25) percent of the work load of the vacationing employes in the Customs Brokerage Office, Transportation Department, St. Albans, Vermont, and as a penalty for the aforementioned violations, Carrier shall be required to compensate the employes listed below, at the punitive rate, for al time spent performing all the daily work of the vacationing employes at the rates of their respective positions and/or the positions relieved, whichever is the higher, and for the number of hours eacr day as shown:

P. R. Domey	—May 17, 1955	—3½ hours—working in place of R. E. Prior on vacation.
	May 18, 1955	—2 hours—working in place of R. E. Prior on vacation.
	May 19, 1955	—2 hours—working in place of R. E. Prior on vacation.
	May 20, 1955	—3 hours—working in place of R. E. Prior on vacation.
	May 23, 1955	—3½ hours—working in place of H. F. Plant on vacation.
	May 24, 1955	—2 hours—working in place of H. F. Plant on vacation.
	May 25, 1955	—2 hours—working in place of H. F. Plant on vacation.
	May 26, 1955	—2 hours—working in place of H. F. Plant on vacation.

	May 27, 1955	—4 hours—working in place of H. F. Plant on vacation.
	June 20, 1955	—2 hrs. 40 mins.—working in place of H. F. Plant who in turn was covering the position of vacationing employe C. C. Sharrow.
H. F. Plant	—May 17, 1955	—2½ hours—working in place of R. E. Prior on vacation.
	May 18, 1955	—2 hours—working in place of R. E. Prior on vacation.
	May 19, 1955	—2 hours—working in place of R. E. Prior on vacation.
	May 20, 1955	—1½ hours—working in place of R. E. Prior on vacation.
	June 20, 1955	—2 hrs. 40 mins.—working in place of H. F. Plant who in turn was covering the position of vacationing employe C. C. Sharrow.
C. C. Sharrow	—May 17, 1955	—5 hours—working in place of R. E. Prior on vacation.
	May 18, 1955	—3 hours—working in place in R. E. Prior on vacation.
	May 19, 1955	—4 hours—working in place of R. E. Prior on vacation.
	May 20, 1955	—2½ hours—working in place of R. E. Prior on vacation.
	May 23, 1955	—2½ hours—working in place of H. F. Plant on vacation.
	May 24, 1955	—2½ hours—working in place of H. F. Plant on vacation.
	May 25, 1955	—2 hours—working in place of H. F. Plant on vacation.
	May 26, 1955	—2 hours—working in place of H. F. Plant on vacation.
	May 27, 1955	—2½ hours—working in place of H. F. Plant on vacation.
R. E. Prior	—May 23, 1955	—2½ hours—working in place of H. F. Plant on vacation.
	May 24, 1955	—4 hours—working in place of H. F. Plant on vacation.
	May 25, 1955	—4 hours—working in place of H. F. Plant on vacation.
	May 26, 1955	—4 hours—working in place of H. F. Plant on vacation.
	May 27, 1955	—½ hour—working in place of H. F. Plant on vacation.
	June 20, 1955	—2 hrs. 40 mins.—working in place of H. F. Plant who was covering position of vacationing employe C. C. Sharrow.

JOINT STATEMENT OF FACTS: In the Customs Brokerage Office Transportation Department, St. Albans, Vermont, the employes involved cover the following listed position, with rates of pay, and assigned duties as shown:

summoned as he should have been. The Opinion of Your Honorable Board in Award 7082 bears out this contention. The employes who remained on the job and divided up the work have no grievance under these Rules, since the Rules, themselves, call for a specific remedy. This is especially true when these Rules are read in connection with Rule 12(a), where it is provided that the carrier shall not be required to assume greater expense because of granting the vacation than would have been incurred if the employe was not granted the vacation and was paid in lieu thereof. If these claims should be allowed, they would total a larger sum than the carrier would have paid for straight time to the relief worker, contrary to the provisions of Rule 12(a). If these claims should be allowed and the relief worker should put in tickets for the failure of the carrier to call him, the total of that expense would greatly exceed the cost of paying the employe in lieu of vacation. Rule 12(a) forbids such a result.

Subsequent to this claim various employes in the Customs Office have been on vacation and a relief vacation worker was furnished to relieve them with the exception of one day as covered in the claim for overtime June 20, 1955, when there was no relief worker available. Even though relief vacation worker was used, brought about by a slight increase in the business handled in this office, it is again pointed out that on June 20, 1955 when overtime is claimed by three employes such handling of the employe's work while he was covering the position of the Cashier on vacation was done during their regular tour of duty which indicates no burden was placed upon them.

Previous to this claim relief vacation workers have been furnished in this office when in the opinion of the Carrier there was sufficient work to justify such relief, but on the dates involved in this claim it was not considered the volume of work called for additional help which reasoning was apparently correct as this claim is for punitive compensation for service performed during the hours involved in the regular tour of duty of the employes listed.

All matters contained in this submission have been the subject of discussion in conference between the parties.

OPINION OF BOARD: It is the contention of the Carrier that the employes who were assigned the vacationing employes' duties were not required to work any overtime but were able to perform their regular duties as well as absorb the work of the vacationing employes, during their regular tour of duty, which indicates no burden was placed upon them.

In the Joint Statement of Facts the Organization and the Carrier agree that:

> (1) During the years 1953 and 1954 a vacation relief worker was furnished for each of the above listed jobs.
>
> (2) That through instructions of the Custom Broker, **all of the duties** of the vacationing employe were performed by claimants.

The Carrier's statement that claimants "normally did not have enough work to do" cannot be agreed with in view of the fact that when the Carrier had reduced the office force in the Customs Department it was necessary to have the regular employes perform their duties on an overtime basis.

The Carrier's reference to the explanation given by Referee Wayne L. Morse regarding Rule 10(b) that "the 25 percent figure contained in the

section was not intended as any exact mathematical yardstick which the parties could apply with precision in measuring the distribution of work," would not be applicable in this situation because it is admitted that **all of the duties** of the vacationing employes were assigned and performed by claimants.

The Carrier also refers to the opinion of Referee Morse regarding Article 6 and the question of whether there is a "burden" on these employes is a question of fact and will vary from case to case.

The Board completely agrees to this reference and calls to the attention of the Carrier that prior to the year 1955 and since, the Carrier has furnished vacation relief workers for each of the above listed positions, which would indicate to this Board that they (Carrier) have agreed that to place all of the duties of the vacationing employes on the claimants would be a burden.

It is also admitted in the Joint Statement of Facts that "The preponderance of the duties of the positions in the Customs Brokerage Office have to be performed daily, account nature of the work and the U. S. Government requirements, and cannot be held over to be performed at a later date." The employes state that any of their work that could be held in abeyance for the short period while an employe was on vacation was left to accumulate and necessarily had to be done after the return of a vacationing employe thereby causing a burden on him.

The Board must agree with the claimants that when the provisions of the Vacation Agreement have been violated a penalty is imposed to the extent of the violation, in order to maintain the integrity of the agreement. As to whom the penalty is paid is incidental for if the agreement is violated the Carrier must pay the penalty therefore in any event.

In view of all the facts and the evidence in this case the violation has been established and the claim must be sustained.

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; and

That the Carrier violated the Vacation Agreement as contended.

AWARD

Claim sustained at pro rata rates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1959.