

Award No. 10298

Docket No. CL-10119

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

George D. Bonebrake, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that,

(a) The Carrier violated the Agreement when, at Dalton, Georgia, on Tuesday and Wednesday, December 4 and 5, 1956, it required Mr. G. A. Murphy, and employe not covered by the Clerks' Agreement to fill a temporary vacancy in the position of Chief Clerk-Cashier.

(b) Mr. D. S. Lemons, Relief Clerk, Atlanta, Georgia, shall now be additionally compensated two days at time and one-half the rate of Chief Clerk-Cashier.

EMPLOYEES' STATEMENT OF FACTS: 1. On Monday, December 3, Tuesday, December 4, and Wednesday, December 5, 1956, Mr. E. A. Wrinkle, Chief Clerk-Cashier at Dalton, Georgia, was absent due to sickness. On Monday, December 3, Mr. C. P. Flowers, Rate Clerk at Dalton, was used to work the vacant position of Chief Clerk-Cashier, Monday being one of Rate Clerk Flowers' rest days. On Tuesday, December 4, and Wednesday, December 5, one G. A. Murphy, Telegrapher, employed at Dalton was, on his rest days as Telegrapher, used to fill Clerk Wrinkle's position of Chief Clerk-Cashier.

2. Mr. D. S. Lemons, Relief Clerk, Atlanta, Georgia, (rest days Tuesday and Wednesday) filed claim under date of January 26, 1957. The claim was declined by the Division Superintendent and appealed through the usual channels up to the Carrier's highest officer designated for that purpose. Conference was held on June 28, 1957, between Mr. G. A. Link, General Chairman, Mr. D. S. Lemons, Division Chairman (assisting Mr. Link) and Mr. Roy A. De Rossett, Assistant Director of Labor Relations, Mr. DeRossett declining the claim.

POSITION OF EMPLOYEES: There is in effect an Agreement between the Parties bearing effective date of October 1, 1938, revised as of June 1, 1952, to include all rules revisions, certain amendments, interpretations and memoranda agreed to subsequent to October 1, 1938. The Agreement is by reference made a part of this Submission. Certain rules, or portions thereof, will be quoted for ready reference and in support of Claimant's position.

All evidence submitted in support of carrier's position is known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether the Carrier violated the Agreement in assigning two (2) days to G. A. Murphy, a clerk-telegrapher at Dalton, Georgia, (who is not covered by the instant Agreement, but by one for another craft), to fill a temporary vacancy as chief clerk-cashier at Dalton, Georgia, instead of to Claimant, a relief clerk at Atlanta, Georgia. The vacancy arose by reason of the sickness of incumbent E. A. Wrinkle when he was absent from his assignment Monday, December 3, Tuesday, December 4, and Wednesday, December 5, 1956. Saturday and Sunday were his assigned rest days. On the first day of his absence, Monday, December 3, 1956, C. P. Flowers, rate clerk at Dalton, Georgia, filled the vacancy. Such day was one of Flowers' assigned rest days. The other two days, December 4 and 5, 1956 are those in question. Claimant filed claim under date of January 26, 1957, for these two days. His rest days on his assignment at Atlanta, Georgia, are Tuesday and Wednesday, the days which also were the rest days of G. A. Murphy at Dalton, Georgia.

The Organization contends that because Claimant, assigned to and working at Atlanta, Georgia holds common seniority with clerks assigned to and working at Dalton Georgia — as well as elsewhere throughout the seniority district — he was entitled to and should have been given the job; or at least that the Carrier violated the Agreement in giving the job to Murphy. Carrier's contentions are primarily three; (1) that an emergency situation arose because of the sickness of the regular occupant — the duration of which was not known—; (2) that Claimant, who had a relief assignment as clerk at Atlanta, Georgia 113 miles distant, was not available; and (3) that there is no rule or provision in the Agreement requiring it to use a regularly assigned clerk on his rest days to fill a temporary vacancy at another point on the Division.

Arguments both way are made, but in our view the rule of reason should prevail. The circumstances are such that in the absence of a positive requirement to that effect — or one clearly showing such intention — it would be unreasonable and unrealistic to fill the job, or at least to attempt to do so, with an Employee 113 miles away. If such had been the intent, the parties could have employed appropriate language so as to eliminate the problem. This was not done, and we accordingly find that under the circumstances involved that the Agreement has not been violated.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1962.