

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

**MINNEAPOLIS, ST. PAUL AND
SAULT STE. MARIE RAILROAD COMPANY**

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

(1) Carrier violated the rules of the Clerks' Agreement by failing and refusing to use claimant, Mr. J. S. Bunkholt, to fill the position of Bill Checker left vacant by a vacationing employee.

(2) That, as a penalty for the rule violation, Mr. Bunkholt now be allowed five (5) days' pay at the rate of time and one-half.

EMPLOYEE'S STATEMENT OF FACTS: The occupant of the position of Bill Checker in the Minneapolis Local Freight Office, with assigned hours of 2:00 P. M. to 10:00 P. M., was absent on vacation December 17th to 21st, 1957, both dates inclusive. The position was not filled but the work from 2:00 P. M. to 5:00 P. M., which the Carrier maintains is largely messenger work, was absorbed by another messenger. The work normally assigned the position from 5:00 P. M. to 10:00 P. M. was performed by men from the Agent's office on an overtime basis. The men used held positions with assigned hours of 8:00 A. M. to 5:00 P. M. and, therefore, were not available to fill a position with assigned hours of 2:00 P. M. to 10:00 P. M. Claimant, Mr. J. S. Bunkholt, was the senior available qualified employee.

This claim was appealed to Manager Personnel, Mr. Anderson, on May 13, 1957, and denied July 12, 1957. Employees' Exhibits Nos. 1 and 2.

POSITION OF EMPLOYEE: There is in evidence an agreement between the parties bearing effective date August 1, 1955, in which the following rule appears:

Rule 69. ANNUAL VACATIONS.

Paragraph (a) of the rule reads:

"Parties signatory to this agreement are governed by the National Vacation Agreement signed December 17, 1941, and the amendments and interpretations made thereto to date. Subject to said agreement, amendments and interpretations, employees will be granted vacations under the following terms:"

Article 10(b) of the Vacation Agreement reads as follows:

"Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective

Carrier contends that this claim is not supported by the rules and respectfully requests that it be denied by the Board.

All data submitted in support of the Carrier's position has been presented to the Committee and made a part of the particular question in dispute.

OPINION OF THE BOARD: The Bill Clerk-Checker in Carrier's Minneapolis Local Freight Office, with assigned hours 2:00 to 10:00 P. M., Monday through Friday, was absent on vacation December 17 through 21, 1957. According to Carrier, the work load of the position was exceptionally light at the time and it decided to blank the position from 2:00 to 5:00 P. M. but to fill it after 5:00 P. M. by utilizing clerks from the same office on an overtime basis. The work during the former hours, largely messenger work, was performed by a messenger employee. The work normally assigned after 5:00 P. M. was performed on alternate days, on an overtime basis outside of their regular assigned hours, by an Assistant O.S.D. Clerk and a Warehouse Clerk, both of whom had regular assigned hours 8:00 A. M. to 5:00 P. M., Monday through Friday, and had requested any extra or overtime work in the office. Claimant made no request for the vacancy during the period in question; and it was only after Carrier had the work performed as it did that this claim was filed.

Employees contended that Claimant, a Crew Caller with regular assigned hours 12:01 to 8:01 A. M., Tuesday through Saturday, should have performed the work of the vacationing employee as the "senior available qualified employee."

Before the Board, Employees asserted that more than 25% of the work load of the vacationing employee was distributed among other employees, in violation of Article 10(b) of the National Vacation Agreement dated December 17, 1941, adopted by the parties by Rule 69 of the Agreement between them effective August 1, 1955; and that Claimant should have received the work, pursuant to Article 12(b) of the National Vacation Agreement.

The relevant provisions of the National Vacation Agreement were as follows:

"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 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.

"12.(b) As employees exercising their vacation privileges will be compensated under this agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority."

Carrier maintained that the use of the two Clerks in the manner stated satisfied the relief worker provisions of Article 10(b), and further that since both were senior to Claimant the seniority provision of Article 12(b) had been observed.

In the opinion of the Board, the circumstances of the matter required the Carrier to provide a relief worker pursuant to Article 10(b). The record did

not precisely and quantitatively indicate the equivalent percentage of the vacationing employee's work load distributed among fellow employees nor the amount of time the latter spent in performing his work, other than Carrier's statement at one point that there resulted a 13-hour day for the two Clerks on alternate days. However, Carrier's final disposition of the matter on the property in terms stated that the two Clerks "alternated in performing the bill checker's duties on an overtime basis outside of their regular assigned hours" (emphasis ours), and maintained that this "satisfies the relief worker provisions of Article 10(b)"—without claiming that 25% or less was involved.

This, absent a denial of Employees' most recent previous assertion on the property that far in excess of 25% of the work on the job was necessary, indicates the validity of the latter assertion.

Thus, it was necessary to furnish a relief worker, and the ultimate question presented here was who the relief worker should have been, as between Claimant and the two Clerks. Article 12(b) required that, in the absence of utilization of a regular relief employee, "effort will be made to observe the principle of seniority." Without contractual implementation of the meaning of the latter caveat, the Board believes that it has not been demonstrated that Carrier violated Article 12(b) in assigning the work to the two Clerks, each senior to Claimant, for performance alternately at times outside of their regular assigned hours, rather than to Claimant. Thus, each day an employee senior to Claimant was used. In a technical sense, Carrier may be said to have "distributed" the work among a messenger on the one hand and two Clerks on the other, instead of hiring one relief worker; but the claim presented here was that of Claimant, and no question was raised as between the two Clerks themselves, or between them and the messenger, nor as to their qualification to do the work.

Employees also asserted that the two Clerks were required to suspend operation on their own assignments prior to 5:00 P. M. on the days they relieved the vacationing employee, in violation of Rule 53 of the Agreement between the parties. The record does not sustain the assertion.

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 claim is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1962.