

Award No. 11115
Docket No. CL-10846

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DIVISION)**

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

(a) That the Carrier violated the terms of the Clerks' Agreement and memorandum in connection therewith when it required Steno-Clerk, Arsula Dillon, in the office of the Chief Medical Examiner at Huntington, West Virginia, to perform the work assigned to the higher rated position of Secretary, when the incumbent of that position was on vacation from November 18 to November 22, 1957, and from December 16 to December 20, 1957, and

(b) That the Carrier failed to fill Mrs. Dillon's position of Steno-Clerk during the time she was relieving on the position of Secretary, and

(c) That the Carrier now compensate Mrs. Dillon for the difference between what she was paid as Steno-Clerk (\$17.35 per day), and what she should have been paid as Secretary (\$19.43 per day), and

(d) That the Carrier in addition allow Mrs. Dillon eight (8) hours pay at the time and one-half times rate of the position of Steno-Clerk for each day, November 18 to November 22, 1957, and from December 16 to December 20, 1957, that the position of Steno-Clerk was not filled.

EMPLOYEES STATEMENT OF FACT: 1. On the date this claim arose there were in the office of Carrier's Chief Medical Examiner the following employees, covered by the Clerks' Agreement, occupying positions as indicated:

Name	Classification	Position Number	Rate of Pay
John J. Smole	Special Representative	E-1	\$27.16
Esther M. Persinger	Secretary	A-1	19.43
Arsula Dillon	Stenographer-Clerk	A-2	17.35
R. O. Lay	Stenographer	A-3	20.96

All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: While the Secretary to the Chief Medical Examiner for the Carrier was on vacation, the Carrier assigned some of her work to the Claimant, a clerk possessing an employment classification junior to that of the Secretary. The Secretary received \$19.43 per day, the clerk, (Claimant) receives \$17.35 per day.

The question in this case is whether or not the Claimant performed more than 25% of the work load of the Secretary during the period she was on vacation.

Article 6 and 10 of the Vacation period provides as follows:

"ARTICLE 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 relief work is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employes remaining on the job, or burden the employe after his return from vacation, the carrier shall not be required to provide such relief worker."

"ARTICLE 10.

"(a) An employe designated to fill an assignment of another employe on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employe, such employe shall receive the rate of the relief position. If an employe receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employe in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employe will be paid.

"(b) Where work of vacationing employe is distributed among two or more employes, such employes 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 conditions are set forth in Articles 6 and 10 of the Vacation period under which the position of an Employe on vacation may be blanked. The position of Secretary was blanked i. e., no one was designated to fill her position.

Further, Article 10(b) specifies that when the position of a vacationing Employe is blanked, not more than 25% of the normal work load may be performed by others, and that within the 25% limitation Employes not on vacation will be paid their own respective rates.

Carrier paid Claimant at the rate of her regular assignment pursuant to the terms of Article 10(b) because they allege that the 25% limit was not exceeded.

The evidence is in conflict as to whether Claimant exceeded the 25% limit. There is in evidence however facts which support Carrier's position with respect to the percentage limitation.

The duties assigned to both of the clerks were similar in many aspects and the record before this Board does not preponderate in the Claimant's favor for the reason she did not perform work in excess of 25%.

However, it is asserted by the Organization that although the 25% limitation was not exceeded, the Claimant would be entitled to the higher rate of pay of the Secretary pursuant to the provisions of Rule 45 of the Clerks Agreement, and the relevant portion in part as follows:

"RULE 45—PRESERVATION OF RATES

"(a) Employees temporarily or permanently assigned to higher rated positions for a full day or less shall receive the higher rates for the full day . . ."

When determining whether the National Vacation Agreement or the Rules Agreement should govern, it has been held in deciding disputes of similar nature by this Board that the Rules Agreement shall prevail in the event of a conflict.

It is also asserted by the Claimant that the work assigned was not distributed to two or more persons as required by Article 10(b), but only to one person.

It is our determination from the foregoing that the provisions of Rule 45, supra, prevail.

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

AWARD

Claim (a) sustained to the extent as expressed in the Opinion.

Claim (b) denied, Claim (c) sustained, and Claim (d) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February, 1963.