



Award No. 17197

Docket No. CL-17666

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6431) that:

1. Carrier violated the National Vacation Agreement at Clearing, Illinois, when it failed to fill F. Waliewski's Assistant Chief Clerk position during the time he was on vacation for the period of July 25 to and including August 14, 1966.

2. That employees, who were available, willing, able and qualified to perform the work of the position on the dates here involved, be reimbursed the exact amount they would have earned had they been called to fill Mr. Waliewski's position during the time he was on vacation.

3. The names of Claimants and the dates on which the violation occurred have been furnished to the Carrier at all stages of handling and are as follows:

<u>Claimants</u>	<u>Date of Violation</u>
W. Witthoft, F. Uttenweiller or V. West	July 25, 1966
F. Uttenweiller, V. West or A. Schultz	July 26, 1966
W. C. Mutzbauer, J. Behrschmidt or W. Erklens	July 27, 1966
W. C. Mutzbauer, J. Behrschmidt or A. Schultz	July 28, 1966
A. Herb, A. Schultz or J. Morgan	July 29, 1966
W. Witthoft, F. Uttenweiller or V. West	August 1, 1966
F. Uttenweiller, V. West or A. Schultz	August 2, 1966
W. C. Mutzbauer, J. Behrschmidt or A. Schultz	August 3, 1966
J. Behrschmidt, W. C. Mutzbauer or A. Schultz	August 4, 1966

P.M.) to sign and stamp bills of lading which the assistant chief clerk and each of the chief clerks on the three shifts normally handle.

The employees claim that, in addition to the work performed by the second trick chief clerk of signing bills of lading, the remaining employees on the first shift had to perform part of the Assistant Chief Clerks' duties from 9:00 A.M. to 2:00 P.M. each day. This claim was declined by the carrier because other clerks were not used to perform the Assistant Chief Clerk's work.

The Agreement between the Carrier and the employees of the Carrier represented by the Brotherhood of Railway and Steamship Clerks, effective March 1, 1964 is on file with your Board and by reference is made a part hereof.

Throughout the handling of this claim on the property, the Carrier has consistently objected to and taken exceptions to the employees' claim on the ground that it was not handled in accordance with the provisions of Rule 29 of the above referred to Agreement, because claim was not submitted by/or on behalf of the employees involved.

OPINION OF BOARD: The claim in this case arises from the fact that the Carrier did not fill an Assistant Chief Clerk position from July 25, 1966, until August 16, 1966, during which period the incumbent in that position, Mr. F. Waliewski, was on vacation. It is alleged that failure by the Carrier to fill the position when Mr. Waliewski was on vacation violated Article 6 and Article 10(b) of the National Vacation Agreement, which Articles read as follows:

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

"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."

The Carrier's defense to the claim in this case is twofold. Its first defense is that the claim should be denied because Rule 29 of the Agreement has not been complied with by the Organization in the filing and processing of the claim. More specifically, the Carrier contends that the employees on whose behalf the claim is made have not been identified as required under Rule 29.

This defense is without merit. The Organization set forth the names of three employees in order of their seniority for each day that the position was blanked during Mr. Waliewski's vacation on the basis that if the senior employee on any day were unavailable, the next senior em-

ployee named would be the person entitled to pay for that day. The availability or unavailability of a named employee on a particular day is a readily and easily ascertainable fact. Furthermore, many Awards have held that a specific name need not be included in a claim in order to satisfy the requirements of Rule 29 so long as the employee on whose behalf the claim is being made can be identified through the Carrier's records. There are limitations, of course, as to the extent to which the Carrier must go in identifying the person entitled to a remedy as a result of a contractual violation. Here, however, that limit is far from being reached, since, as was stated earlier, the senior available employee who was entitled to fill the position on any particular day can be identified with little or no difficulty.

The second defense of the Carrier is that the Organization did not meet its burden of proof that fellow employees of Mr. Waliewski performed more than 25% of his work load while he was on vacation. The allegations and evidence in the Record on the property related to this issue are as follows.

The first letter from the Organization to the Carrier concerning the claim in this case asserted that the failure to fill Mr. Waliewski's position during his vacation "increased the work burden of the employees remaining on the job during his assigned hours," but the Organization did not assign any percentage to this alleged increased work burden. The Organization went on to assert that the Chief Clerk on the second trick (Waliewski's position was on the first trick) had to report to work two hours in advance of his regular starting time in order to perform the work of Waliewski's position that had backlogged. In other words, the Chief Clerk on the second trick worked two hours per day more than he normally worked during the period that Mr. Waliewski was on vacation.

The Carrier's response to this letter came in a letter dated November 9, 1966, from Mr. Santoro, Agent for the Carrier, who stated that less than 25% of the work load of Mr. Waliewski's position was assumed by other employees during his vacation. Mr. Santoro also asserted that the reason that the second trick Chief Clerk worked the two hours of overtime daily during Waliewski's vacation was not to catch up on Mr. Waliewski's "backlogged" work.

Mr. Santoro's letter prompted a response by letter dated December 10, 1966, from the Organization to Mr. Overbey, Superintendent for the Carrier, which response challenged Mr. Santoro's statements that less than 25% of Mr. Waliewski's work load had been assumed by other employees. This response by the Organization asserted that over 25 % of Mr. Waliewski's work load had been assumed by other employees, and stated that the other employees on Mr. Waliewski's trick were required to perform such duties of his position as "receipt and strip bills of lading, apply rates, make special reports for the Corn Products Company, telephone and other sundry duties attached to this position." The Organization alleged that such other employees worked a total of five hours doing Mr. Waliewski's duties. The Organization's letter then repeated its assertion that the second trick Chief Clerk was required to report two hours in advance of his regular starting time each day that Mr. Waliewski was on vacation in order to perform his backlog. Lastly, the letter asserted that the Chief Clerk on the second trick also worked an hour and one-half into his regular shift when Mr. Waliewski was on vacation performing the duties of Waliewski's position.

Mr. Overbey by letter of January 30, 1967, responded to the Organization's December 10, 1966, letter. Mr. Overbey's letter asserted the Carrier's defense to the claim that the requirements of Rule 29 had not been met by the Organization in the filing and processing of the claim, the defense that we have earlier in this award determined to be without merit. Mr. Overbey in his January 30 letter devoted only one sentence related to the claim of the Organization as to the amount of work of Mr. Waliewski's position that had been assumed by other employees, that sentence being: "For these reasons and others contained in Agent Santoro's letter dated November 9, 1966, claim and appeal as presented are hereby both denied in their entirety."

The Organization then wrote again to Mr. Overbey on February 2, 1967, this letter concerning itself solely with the defense that Mr. Overbey had raised with respect to Rule 29. On February 27, 1967, Mr. Overbey responded to the Organization's February 2 letter reconfirming his previous declination of the claim "for the same reasons explained" in his letter dated January 30, 1967, to the Organization. The only indirect reference in Mr. Overbey's February 27 letter as to the amount of work assumed by other employees was that even if there had been a proper claim submitted by the Organization (which was alluding to the Rule 29 issue), "it would not be valid for the reasons given to you by Agent Santoro."

Upon receipt of Mr. Overbey's February 27, 1967, letter, the Organization wrote to the Director of Personnel of the Carrier on March 28, 1967, appealing from Mr. Overbey's decision. In its March 28, 1967, letter, the Organization reviewed the history of the claim and the various responses it had received from Mr. Santoro and Mr. Overbey. The Organization then almost verbatim as in its December 10, 1966, letter to Mr. Overbey set forth its position as to the amount of work in Mr. Waliewski's position that had been assumed by other employees during Mr. Waliewski's vacation.

The Carrier's Director of Personnel replied to the Organization on May 26, 1967, again asserting the Rule 29 defense. Insofar as the amount of work involved was concerned, his statements were as follows: "Without prejudice to the defect in this case the claim would not be valid had it been submitted for the employee who stood to be used had the position been filled. The chief clerk regularly performs many of the same duties as the assistant chief clerk. Less than two hours of specific assistant chief clerk work was assumed by other employees."

The foregoing constitute the entire record on the property concerning the amount of Mr. Waliewski's work assumed by other employees during Mr. Waliewski's vacation. It has been set forth in detail in order that the parties may be assured that the Board has considered this issue fully.

There is, of course, a difference between an allegation and evidence. Also, it is one thing when an allegation is made by one party and not denied by the other; it is quite another thing when an allegation is made by one party and denied by the other. When the latter occurs, a mere reiteration of the allegation is no substitute for evidence and proof to support the allegation. With these principles in mind, we find the following.

The allegations by the Organization as to the amount of work assumed by other employees during Mr. Waliewski's vacation can be divided into two parts. One part relates to the amount of work assumed by the

Chief Clerk on the second trick. As to this part, we find the repeated allegations by the Organization that the second trick Chief Clerk worked two hours' overtime each day that Mr. Waliewski was on vacation performing the work of Mr. Waliewski's position and that the same Chief Clerk also worked an hour and one-half each day into his regular shift performing such work. We also find as to this part that the Carrier denied that the second trick Chief Clerk performed any work of Mr. Waliewski's position. Although the Board has a healthy hunch that the Chief Clerk did perform some work of Mr. Waliewski's position, because otherwise it was a remarkable coincidence that the Chief Clerk worked two hours of overtime daily while Mr. Waliewski was on vacation, the Board cannot rely on healthy hunches instead of evidence in deciding cases. Inasmuch as the Organization presented no evidence to support its allegations as to the Chief Clerk's work and the Organization had the burden of proof which it failed to meet, we are forced to decide that the record in this case does not permit this Board to assign any percentage of assumed work to that of the second trick Chief Clerk.

The second part of the Organization's allegations relates to the amount of work assumed by the fellow employees of Mr. Waliewski other than the Chief Clerk. As to this second part, the Carrier admitted that some of the work of Mr. Waliewski's position was assumed by such other employees but that it was less than two hours daily. Since the Organization did not present any evidence to support its allegation that such other employees assumed more than 25% of the work of Mr. Waliewski's position and it had the burden of proof which it did not meet, the claim in this case must be denied.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1969.

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