

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35394
Docket No. CL-33340
01-3-96-3-872**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Delaware and Hudson Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11483) that:

I, Richard M. Rumenopp, claim 8 hours pay for the following days: July 10, 11, 12, 13, 14, 1995. I was denied a hold-down vice W. G. Lawyer, Mechanical Department Clerk in Oneonta, New York, a scheduled vacation.

In my place Manager Emerson Horth performed the clerical duties.

Claim is further made that a timely decision was not rendered by Carrier at the final on the property level as set forth in Rule 28-2.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

During a five day vacation taken by Oneonto, New York Mechanical Department Clerk W. G. Lawyer, Manager E. L. Horth, who is responsible for requesting and receiving supplies, completed eight requisition forms normally completed by Lawyer. That work took Horth 25 minutes to complete during the five day period Lawyer was gone. This claim followed, with the Organization asserting that the Claimant should have been given a hold down during Lawyer's vacation and that Horth violated Scope Rule 1(b). ("Positions and/or clerical duties shall not be removed from the application of Rules of this Agreement except by agreement between the parties signatory hereto or as provided herein.")

The Organization has not carried its burden. Rule 1(c) provides:

- "(c) Clerical duties covered by this Rule which may be incidental to the primary duties of an employee not covered by this Agreement, may be performed by such employee provided the performance of such duties does not involve the preponderance of the duties of the other employee not covered by this Agreement."

Manager Horth - who is responsible for requesting and receiving supplies - filled out eight requisition forms which took 25 minutes over a five day period. The Organization has not shown why Rule 1(c) did not permit Horth to do so. Clearly, the performance of those duties was "incidental to the primary duties" performed by Horth in his capacity of Manager and "does not involve the preponderance of the duties" performed by Horth. Rule 1(c) permitted Horth to perform this work.

The fact that Horth may not have performed those functions when the incumbent Lawyer was on duty does not change the result. Again, Rule 1(c) addresses "[c]lerical duties covered by this Rule. . . ." Horth's activities concerning the requisitions during Lawyer's vacation were "[c]lerical duties covered by this Rule. . . ." Under Rule 1(c), Horth could perform those duties in Lawyer's absence so long as they were "incidental to the primary duties" performed by Horth and not the "preponderance of the duties" performed by him. Stated simply, at best, Horth's performance of 25 minutes of Lawyer's duties during Lawyer's five day absence was de minimis and insufficient to justify the Organization's position that Horth violated the Scope Rule.

The Organization's argument that the Carrier did not timely deny the claim after conference is not persuasive to change the result. See Third Division Award 33263

between the parties. ("The Carrier correctly notes that Rule 28-2 does not require it to issue another declination within 60 days after the claims conference in those instances when it has already declined the claim.") Here, the Carrier denied the claim as required by the Rule.

Based on the above, the claim shall be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of April, 2001.