

Award No. 2911  
Docket No. TE-2888

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

---

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**  
**THE DELAWARE, LACKAWANNA AND WESTERN**  
**RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that:

- (a) The carrier violated Rule 17-(a) of the Telegraphers' Agreement when on April 24, 1944 it required or permitted regularly assigned towerman J. Lawless to displace extra towerman Hilton S. Covey from the first trick tower position at Bridge-60, assigned hours 7:30 A. M. to 3:30 P. M., and;
- (b) In consequence of that violation and improper displacement the carrier shall be required to pay to towerman Hilton S. Covey the difference between what he would have earned had he remained on the Bridge-60 positions for the 5-day period, April 23rd, 24th, 25th, 26th and 27th, and what he was permitted to earn while occupying other positions and the day entirely lost during the same 5-day period.

**EMPLOYES' STATEMENT OF FACTS:** An agreement by and between the parties bearing effective date of May 1, 1940 is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Beginning April 18, 1944 and continuing through April 28, 1944, Towerman M. Slocum, regularly assigned to the first trick tower position at Bridge-60, assigned hours 7:30 A. M. to 3:30 P. M., was off duty causing a temporary vacancy of less than 30 days. Extra Towerman F. McCormick stood for and was assigned to the vacancy and occupied it April 18 to April 22, both dates inclusive.

Hilton S. Covey, an extra towerman senior to McCormick, while occupying a temporary vacancy at Kingston Yard on April 21, 1944 notified the chief train dispatcher of his intention, under the rule, to displace Towerman F. McCormick from the first trick position at Bridge-60 effective 7:30 a.m. April 23rd. That displacement was permitted and Covey worked the position one day, April 23rd.

Towerman J. Lawless, regularly assigned to second trick (3:30 P. M. to 11:30 P. M.) at Bridge-60, at or about 8:00 P. M. April 22nd declared to the assistant chief train dispatcher his intention to displace Covey from the first trick position at Bridge-60 effective 7:30 A. M. April 24th. The assistant chief train dispatcher denied the request, but later the chief train dispatcher allowed it. Because of the provisions of the Hours of Service Law, the carrier required Lawless to vacate his regular second trick position on April 23rd to permit him to occupy the first trick position beginning 7:30 A. M., April 24th.

The carrier after permitting Lawless to displace Covey effective 7:30 A. M. April 24th diverted Covey to other positions, viz., third trick at Cayuga Tower

Extra Operator Covey, who was working a vacancy on a six-day job at Kingston, being available, worked the vacancy on Second Trick, Bridge 60, created by Lawless laying off.

Lawless being properly on the First Trick under the provision of Rule 17(a) continued on that job April 24th, 25th, 26th, 27th and 28th.

Covey who had worked the Second Trick at Bridge 60, Sunday, April 23rd, was supposed to return to Kingston, Monday, the 24th, but the regular man reported back which released Covey from the Kingston vacancy. He was therefore placed at Cayuga Tower, Scranton, continuing on that job April 24th, 25th, 27th and 28th.

The claim is that Covey be paid for April 23rd, 24th, 25th, 26th and 27th because he was displaced by Lawless, a regular man, who was entitled to the job under the rule mentioned above.

To have refused Lawless the senior qualified applicant to place himself on the First Trick at Bridge 60 would most certainly have resulted in a claim under Rule 17 (a).

Covey in this particular instance is not entitled to compensation by any stretch of the imagination.

Rule 17(a) clearly implies that the senior qualified applicant will be given a position when it is vacant five (5) days and all that was necessary was that he make his intention known at least twenty-four hours before the starting time of the First Trick assignment. Surely, the Telegraphers' Committee were aware that J. Lawless made his intention known more than twenty-four hours before starting time on April 24th—further they are aware that J. Lawless is senior to Covey and consequently was entitled to the position. The fact is, J. Lawless under Rule 17(a) had the right to place himself at any time after the position was vacant for five (5) days as long as he conformed to the rule in notifying the Chief Dispatcher—which he did.

The claim is without merit and not made in good faith and your Board is respectfully requested to sustain the position of the Carrier that there is no merit to this claim.

**OPINION OF BOARD:** Rule 17, "Temporary Vacancies," applies to both regularly assigned and extra employees. The rule is controlling of this dispute.

As of April 18, 1944, a temporary vacancy on the first trick (7:30 a.m. to 3:30 p.m.), towerman's position, Bridge 60 Tower, occurred. Duration of vacancy unknown.

F. McCormick, a qualified extra towerman, then unassigned, caught the vacancy and held it April 18, 19, 20, 21, and 22.

H. S. Covey, a qualified extra towerman, senior to McCormick, then filling a temporary vacancy, which vacancy terminated on April 22, signified his intention to displace McCormick, his junior, on the first trick position, Bridge 60 Tower, as of 7:30 A. M., Sunday, April 23, notice of intention being filed on April 21, or more than 24 hours before starting time.

Lawless, regularly assigned to the second trick (3:30 P. M. to 11:30 P. M.), towerman's position, Bridge 60 Tower, senior to both Covey and McCormick, on the night of April 22, in writing, signified his intention to displace Covey on the first trick commencing 7:30 A. M., Monday, April 24. Lawless, in order to make himself available for the first trick on April 24, laid off of his own accord on April 23. The Hours of Service law prevented Lawless from taking over the temporary vacancy on the first trick, Bridge 60 Tower, the period of which, as Rule 17(a) applied to it, started 7:30 A. M., April 23; also, the notice by Lawless of intention to occupy that vacancy was not made until about 11½ hours before that starting time. Covey displaced McCormick on the first trick April 23, and McCormick took over the vacancy caused by Lawless laying off on second trick April 23.

Carrier permitted Lawless to displace Covey on first trick, 7:30 A. M., Monday, April 24. In doing so, Carrier erred. Covey, who displaced McCormick on the temporary vacancy on April 23, was subject to displacement thereafter only by a senior "incumbent of a temporary vacancy that has terminated," otherwise by a senior employe exercising "displacement rights only after each five (5) day period of the temporary vacancy," who as well makes "his intention known at least twenty-four (24) hours before starting time" of the particular five (5) day period that he intends to begin work on such temporary vacancy.

Covey is entitled to recover the difference between what he would have earned had he remained on the Bridge 60 position for the period April 24, 25, 26, and 27, and what he earned during the period April 24 to 27, inclusive.

**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 claimant Covey is entitled to be paid the difference between what he would have earned had he been permitted to remain on the Bridge 60 position April 24, 25, 26, and 27, 1944, and what he actually earned April 24 to 27, 1944, inclusive.

#### AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1945.