

Award No. 3132

Docket No. TE-3101

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(LINE WEST OF BUFFALO)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, Line West of Buffalo, that Floyd Raney regularly assigned relief telegrapher-switch-tender at Edgerton Switch, Ohio, on Sunday, Monday and Thursday of each week, and relief telegrapher-towerman at Butler, Indiana, on Tuesday, Wednesday and Saturday of each week, shall be compensated for eight hours at his regular rate on December 15, 16, 18, 19, 22, 23, 25, 26, 29 and 30, 1943, a total of ten days, on account of being required by the Carrier to vacate his regular assignment on each of these days to fill the position of second trick ticket clerk-telegrapher at Corunna.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date February 1, 1943, as to rules of working conditions, and December 27, 1943, as to rates of pay, is in effect between the parties to this dispute.

Floyd Raney was regularly assigned to work as telegrapher-switchtender at Edgerton, Ohio, and as telegrapher-towerman at Butler, Indiana, on the following named days and tours of duty in each calendar week:

At Edgerton Switch:

Sunday	7:55 A. M. to	3:55 P. M.
Monday	3:55 P. M. to	11:55 P. M.
Thursday	11:55 P. M. to	7:55 A. M.

At Butler:

Tuesday	3:55 P. M. to	11:55 P. M.
Wednesday	11:55 P. M. to	7:55 A. M.
Saturday	7:55 A. M. to	3:55 P. M.

Friday of each week was Raney's regularly assigned Rest Day. On Wednesday, December 15, Thursday, December 16, Saturday, December 18, Sunday, December 19, Wednesday, December 22, Thursday, December 23, Saturday, December 25, Sunday, December 26, Wednesday, December 29, and Thursday, December 30, 1943, Raney was required by the Carrier to vacate his regularly assigned positions at Edgerton and at Butler and fill the second trick ticket clerk-telegrapher position at Corunna 3:55 P. M. to 11:55 P. M. on each of these days.

OPINION OF THE BOARD: Claimant seeks ten days additional compensation because he asserts that he was improperly required to vacate his relief assignment while working the second trick at Corunna. It is not claimed that he was not properly paid for his service at Corunna, but Organization contends that he is entitled to two days pay for each of the ten days involved i.e., one day for work at Corunna, and one day account of not worked on his relief assignment.

We think Article 13 (a) is applicable. It reads:

"Regularly assigned employees will not be required to perform service on other than their regular positions except in emergencies. When they are required to perform service on other than their regular positions, they will be paid the rate of the position they fill but not less than their regular rate, and in all cases will be allowed actual necessary expenses while away from their regular assigned station."

"In no case will less than one day's pay be allowed for each twenty-four (24) hours held out of their regular job or away from home station."

"Such employees will be paid at rate of sixty-five cents (65c) per hour for waiting and travel time from home station to relief point and return from relief point to home station, except that no waiting time will be paid at relief point when Company assumes lodging expense."

In the instant case, Claimant was diverted from his regular assignment because of the illness of the regular second trick operator at Corunna and the absence of extra operators. A reasonable interpretation of the rule indicates that there was thus created an emergency justifying the diversion. It was so held in Awards 815 and 2511.

We cannot agree with Organization that in order to justify Carrier in making an assignment under the claim of emergency, it must first appear that there are no other available regular employees who may be used on their relief day on a call basis. See Award 2511.

Award 2695 cited by Organization, is not in point here. The Referee in that case specifically pointed out that Award 2511 was distinguishable because of a difference in the Agreement. In Award 2695, the Referee stated (Referring to Award 2511):

"Under the agreement in that case (2511), regularly assigned employees were not to be required to perform service on other than their regular assigned positions except in emergencies. That situation was disposed of there by a holding that an emergency did exist. We think the distinguishing features are such that the award is not a controlling precedent here."

We are unable to find that there was a violation of the Agreement under the facts in this case.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1946.