Award No. 3133

Docket No. TE-3102

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—

(a) That H. M. Rogers, regularly assigned agent-first trick telegrapher at Arlington, Ohio; J. F. Long, regularly assigned second trick clerk-telegrapher at Arlington, Ohio; C. L. Bogart, regularly assigned first trick telegrapher-leverman at North Findlay, Ohio; and D. S. Leiby, regularly assigned second trick telegrapher-leverman at North Findlay, Ohio, were available, entitled to and should have been used to work on their regular assigned rest days on August 13 and 20, August 16, August 14 and 21, and August 15 and 22, 1944, respectively, as a result of the regularly assigned relief employe for these days and positions having resigned and left the service on Saturday, August 13, 1944, his regularly assigned rest day, instead of blanking the first trick telegrapher position at Hancock, Ohio, and using the regularly assigned incumbent thereof to relieve Rogers and Long at Arlington and Bogart and Leiby at North Findlay on their above mentioned rest days, as was done, and

(b) That, as Rogers, Long, Bogart and Leiby were available and entitled to work on these their regular assigned rest days, but not used, they shall each be compensated one day's pay at time and one-half for each of these rest days on which they were not allowed to work, in accordance with the intent contemplated by Article 11-(9) of the Telegraphers' Agreement.

EMPLOYES' 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.

Article 11 of said agreement provides that where it is necessary for a position to be regularly represented for eight hours a day, seven days a week, and where conditions are such that it is practicable to do so, one relief day in seven, without pay, will be afforded.

The positions in the offices at Arlington, Ohio and North Findlay, Ohio named in the statement of claim are positions on which it is necessary that they be regularly represented for eight hours a day, seven days each week, and the conditions are such that it is practicable to afford one relief day in seven, without pay, to the incumbents of the positions in these two offices.

For this purpose, a regularly assigned relief employe is employed to regularly relieve the employes in these two offices one day in seven, and

was bulletined August 1, 1944, because the incumbent had entered the Armed Forces; the relief position was filled by an extra operator—Barker—until Saturday night, August 12, 1944 when Barker resigned. No other extra operator being available, consideration was given to possible arrangements and it was then found possible to dispense with the first trick position at Hancock for a few days, and the regular incumbent of that position was used on the Arlington-North Findlay job for ten days under provisions of Rule 13.

The various conditions under which the several paragraphs of Article 11 become applicable are spelled out very definitely and clearly. It is obvious that neither Article 11-(9) nor any other rule of the agreement supports the claim, and that the employes are now endeavoring to extend the limited application of paragraph (9), **the only rule cited in the claim**, because they have no rule under which the claim can be supported.

Paragraph (9) of Article 11 and paragraph (4) to which (9) refers indicate method of payment to an employe **who is required** to work, and those rules infer that there are certain responsibilities on the part of management when a relief man is diverted, or when a relief man gives notice of illness, but neither is applicable to the circumstances of the instant claim.

The Carrier does not agree that ". . . the intent contemplated by Article 11-(9) . . ." is that regular assigned operators **must** be worked on their respective rest days when there is no extra operator available. If the Carrier can make other arrangements to protect the work on such rest days and does so by using other employes in the same seniority district, subject to the same agreement, making such arrangements in conformity with rules of the agreement, there can be no proper penalty claims from the incumbents of the regular positions.

CONCLUSION:

1. Claimants suffered no loss of pay, but were paid for each of their respective assignments, in accordance with the applicable rules.
2. There is nothing in the agreement which guarantees that the claimants are entitled to more than six days' work or pay each week.
3. No rule of the agreement was violated, and the rule cited by the employes is not relevant.
4. The claims are entirely without merit, not supported by any contractual provision and should be denied.

OPINION OF THE BOARD: In this case, the occupant of the relief assignment was inducted into the Armed Forces, and the relief position was bulletined August 1, 1944. An extra operator was used on this relief position until the night of Saturday, August 12, 1944, when he resigned. As no other extra operator was available to fill the relief position, effective August 13, 1944, Carrier closed the first trick at Hancock, a station in the same seniority district, and diverted the employe at that station to the Arlingon-North Findlay relief assignment.

The claim here is based upon the theory that in the absence of an assigned relief man, or an extra operator in his place, Article 11-(9) contemplates that regularly assigned employes shall be required to work on their relief days.

Article 11-(9) reads:

> "If the Management is given notice of the illness of the relief man in time to permit getting an extra man to the position to be covered and no extra man is available, resulting in the regular employe or employes being required to work, they will be paid at the rate of time and one-half under the principle outlined in No. 4."

This rule does not seem applicable for two reasons:

1. It applies only to illness.

2. It does not require Carrier to use regular employes but only specifies the rate in the event they are so used.

We believe that under Article 13 (a), Carrier was justified in making the assignment on the ground of an emergency. See Awards 815, 2511 and Award 3132.

We find no rule in the Agreement requiring Carrier to use regular employes on their rest days under the circumstances appearing in the instant 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 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 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.