

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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:

1. That Telegraph Job No. 51, hours 11:00 A. M. to 7:00 P. M. in "ON" Cleveland, Ohio, relay office was improperly blanked by the Carrier on July 19, 20, 21, 23 and 24, 1945, and Telegraph Job No. 54, hours 7:00 P. M. to 3:00 A. M., in the same relay office was likewise improperly blanked by the Carrier on July 23, 1945, for eight hours on each of these days, due solely to the absence of the regularly assigned incumbents from duty although qualified relay telegraphers were available but were not called or notified to perform the work of these positions, and

2. That relay telegrapher A. B. Vajda, regularly assigned to work temporarily on telegraph Job No. 48, hours 3:00 P. M. to 11:00 P. M., in this same relay office, who was qualified, available and entitled to have worked four hours' overtime on telegraph Jobs Nos. 51 and 54 on the above-mentioned days on which these telegraph jobs were improperly blanked, but not used, shall be paid for four hours' overtime on each of these days on which he was denied the opportunity to perform this overtime work.

JOINT STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of February 1, 1943, as to rules and working conditions.

The first paragraph of Article 13(c) of said agreement reads:

"(c) Regular assigned employees will be allowed to fill temporary vacancies of less than seven (7) calendar days in their own offices. Temporary vacancies of seven (7) calendar days or more and less than thirty (30) calendar days will be filled by the senior qualified employee applying for same within seven (7) calendar days."

On July 19, 20, 21, 23 and 24, 1945, the incumbent of Telegrapher Position No. 51 in this "ON" office, Cleveland, Ohio, who at the time was holding that position as a temporary vacancy, assigned hours 11:00 A. M. to 7:00 P. M., was absent account sickness. Position No. 51 was not filled on any of those five days.

On Monday, July 23, 1945, the regular incumbent of Telegrapher Position No. 54, assigned hours 7:00 P. M. to 3:00 A. M. in the "ON" office, Cleveland, was absent account sickness. Position No. 54 was not filled on that date.

tary absence of the regular incumbents and that the guarantee rules of the applicable **clerks'** agreement apply to the individual employe and not to the position. The following are in point and by reference are made a part of this submission:

- Award 934, Clerks vs. The Central Railroad Company of New Jersey.
Referee Frank M. Swacker.
- Award 1216, Clerks vs. Wabash Railway Company.
Referee Harris L. Danner.
- Award 1293, Clerks vs. C. & N. W. Railway Company.
Referee Herbert B. Rudolph.
- Award 1412, Clerks vs. Illinois Central Railroad Company.
Referee Royal A. Stone.
- Award 1633, Clerks vs. St. L. S. F. Railway Company.
Referee Richard F. Mitchell.
- Award 1853, Clerks vs. Kansas City Terminal Railway Company.
Referee Norris C. Bakke.
- Award 2822, Clerks vs. Wabash Railroad Company.
Referee Curtis A. Shake.

The principle involved in the instant claim is analogous to the principle adhered to by each referee in the above mentioned Third Division awards and in numerous others, that it is not mandatory that temporary vacancies created by voluntary absence of regularly assigned employes be filled on each and every day the regularly assigned employes do not work.

The awards of the Third Division in these Clerks' cases should not be confused with other awards in which the Clerks' Sunday and holiday rule was involved. Telegraphers do not have the same kind of Sunday and holiday rule as that of the Clerks.

CONCLUSION

1. No rule of the agreement was violated and the employes can cite no rule in support of their claim.
2. Nothing in the agreement guarantees that the claimant is entitled to more than six days' work or pay each week.
3. This claim is a request for a new rule and should be dismissed for lack of jurisdiction. If not dismissed, it should be denied.

OPINION OF BOARD: When the situation arose upon which this claim rests there were at the Carrier's "ON" relay office at Cleveland fourteen regular positions of telegrapher. The Claimant was regularly assigned to a temporary vacancy on position No. 48 with hours from 3:00 P. M. to 11:00 P. M.

The telegrapher regularly assigned to position No. 51, with hours from 11:00 A. M. to 7:00 P. M., was absent on account of sickness from July 19th to July 24th, inclusive, in 1945. For like reason the telegrapher holding position No. 54, with hours from 7:00 P. M. to 3:00 A. M., was absent on July 23rd, 1945. No one was assigned to either position on those days.

The Claimant Vajda contends that he is entitled to pay at the overtime rate for four hours on July 19, 20, 21 and 24, and for eight hours on July 23rd. In other words, he claims that he had the right to work on position No. 51 each of the five days for four hours before the starting time of his regular assignment; and on July 23rd to work four hours on position No. 54 after finishing his own assignment at 11:00 P. M.

This claim is predicated upon Article 13(c) of the controlling Agreement, which insofar as pertinent provides:

"(c) Regular assigned employees will be allowed to fill temporary vacancies of less than seven (7) calendar days in their own offices. Temporary vacancies of seven (7) calendar days or more and less than thirty (30) calendar days will be filled by the senior qualified employees applying for same within seven (7) calendar days."

We think the provisions of the rule do not admit of a construction that would sustain the claim. Inasmuch as the hours of Claimant's regular assignment were in conflict with the hours of work on both positions Nos. 51 and 54, he could not fill either position without relinquishing his regular assignment. The first sentence of the rule, upon which this claim rests, merely confers a right upon regularly assigned employees to fill temporary vacancies of less than seven calendar days in their own offices. It clearly contemplates that one exercising the right must take over the vacant position in its entirety on a pay basis of straight time. See Award No. 3232.

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 parties waived oral hearing thereon;

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 no violation of the Agreement has been established by Claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1947.