

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Charles S. Connell, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE NEW YORK CENTRAL RAILROAD**

**(Buffalo and East)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company (Buffalo and East); that

(a) the carrier violated rules 9 and 13 of the current Telegraphers' Agreement when on March 14, 1948, and continuing thereafter for 13 consecutive days it required A. J. Keator to suspend work on his regularly assigned third trick position at Signal Station 'KY', Kingston, New York, and to perform relief work on first trick Signal Station 'KI', Kingston, New York, from March 14 to 27, 1948, inclusive, not in an emergency; and

(b) Mr. A. J. Keator shall be compensated on the basis of a day's pay at the pro rata rate for each day he was suspended from his regular assignment at Signal Station 'KY', Kingston; and

(c) in addition thereto compensated on the basis of the time and one-half rate for each day on which he performed relief service at Signal Station 'KI', Kingston outside of his regular assigned hours, instead of the pro rata rate which he was paid.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement by and between the parties hereinafter referred to as the Telegraphers' Agreement, bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Mr. A. J. Keator on February 27, 1948, was officially assigned by bulletin under the rules of the Agreement to the temporary position of third trick Telegrapher-leverman at Signal Station "KY", Kingston, N. Y. with the hours of service 11:00 P.M. to 7:00 A.M., daily except Saturday. This being the regularly assigned rest day to this position.

On Saturday, March 13, 1948, while absent from work on his rest day claimant received instructions from the carrier to work the first trick position at Signal Station "KI", Kingston, with hours 7:00 A.M. to 3:00 P.M. commencing Sunday, March 14 to 27, inclusive, with rest day on Mondays. He was not displaced from "KY" nor was his position abolished.

Claimant was ordered to vacate his regularly assigned position at "KY" in a non-emergency to cover the vacation period of incumbent of the position at "KI". Both "KY" and "KI" are located in the city of Kingston, N. Y.

The claim for payment to Mr. Keator account violation of Rules 9 and 13 of the Telegraphers' Agreement, was denied by the carrier.

## CONCLUSION

The Carrier has shown that—

1. The language of Article 12 (a) of the National Vacation Agreement was intended to mean that in administering the Agreement and in interpreting and applying its various provisions, the parties will be guided by a ruling principle that existing working rules should not be applied in a manner which would result in unnecessary expense to the Carrier.

2. An emergency existed when it became necessary to relieve Telegrapher Everett for his assigned vacation and in that emergency Telegrapher-leverman Keator was designated to fill Everett's assignment, for which Keator was paid in accordance with the provisions of Rule 13.

3. While occupying Telegrapher Everett's assignment, Keator was not required to suspend work during the regular hours of that assignment or to absorb overtime, and therefore, Rule 9 is not involved.

The claim of the Employes should be denied because it is not in harmony with the spirit and intent of the National Vacation Agreement and is not supported by the rules of the Telegraphers' Agreement.

**OPINION OF BOARD:** The Carrier operated two Signal Stations at Kingston, New York, i.e., "KI" and "KY." Claimant Keator was assigned as telegrapher-leverman at "KY" with hours 11:00 P. M. to 7:00 A. M. Everett, telegrapher at "KI," hours 7:00 A. M. to 3:00 P. M., was assigned to vacation from March 14 to 27, 1948. On the morning of March 13, the Carrier had no qualified telegrapher available to fill Everett's relief and at 12:06 P. M. asked Keator to fill Everett's vacancy, which he did through March 27, 1948. The Organization claims violation of Rules 9 and 13 of the Agreement.

There is no question that Keator was regularly assigned to his position at "KY" and under the Agreement, Rule 13, entitled to work that position except in case of emergency. The Carrier maintains that an emergency existed when nineteen hours before Everett was to go on vacation, it had no qualified telegrapher to fill his position. This Board is of the opinion that no emergency existed. The Carrier had known since the first of the year when Everett was to go on his vacation and the obtaining of a relief was surely not a sudden or unexpected occurrence. Neither did his being relieved call for immediate action to be taken, as the vacation period could have been deferred, or the Claimant could have been paid in lieu of vacation, as provided in Article 5 of the Vacation Agreement.

The Carrier states that Claimant had requested permission to work the vacation relief at Ulster Park during the same period. This fact has no bearing on this case as it is a fact that Claimant did not request to work at "KI" where he was assigned. He followed the order of the Carrier and then filed a claim for the correction of the violation of the Agreement.

The principal contention of the Carrier is that it acted under the terms and conditions of the Vacation Agreement. In this case, the Telegraphers' Agreement dated January 1, 1940 is the controlling document if in conflict with the Vacation Agreement. The relationship of existing working rules to the Vacation Agreement was fully discussed in Awards 2340, 2484, 2537 and others, and we agree with the interpretation therein made. It was the clear intention of the parties to the Vacation Agreement that the existing rules as to working conditions were to continue unless changed by negotiation.

In paragraph (c) of the claim, the Claimant asks for compensation at time and one-half rate for each day on which he performed relief service at Signal Station "KI," outside his regular assigned hours, instead of the pro rata rate he was paid. We must, however, agree with Awards of this Board that have held that penalty Awards, as in this case, shall be at the pro rata rate.

**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 the Agreement was violated, as indicated in the Opinion.

#### AWARD

Claims (a) and (b) sustained; claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 15th day of November, 1949.