

Award No. 4931
Dockte No. TE-4835

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

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

1. The Carrier improperly suspended F. T. Simrell from his 4:00 P.M. to 12 Midnight position at "WF" Office on December 16, 1947; in consequence thereof the Carrier shall now be required to pay to said F. T. Simrell \$10.64 representing that day's pay;

2. The Carrier improperly suspended F. T. Simrell from his 4:00 P.M. to 12 Midnight position at "BY" Tower Dec. 17 and required him to perform service at the same location 12:01 A.M. to 8:00 A.M. on December 17 and 18, 1947; in consequence thereof the Carrier shall now be required to additionally pay said F. T. Simrell eight (8) hours at time and one-half rate, or \$16.02, for such service performed on December 17 and

3. The Carrier improperly denied to each, J. H. Simrell and R. Fancher the right to perform four (4) hours overtime service at "BY" Tower on each day, December 17 and 18, 1947; in consequence thereof the Carrier shall now pay to each said J. H. Simrell and R. Fancher \$16.02 which represents pay for the work denied.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing effective date of November 1, 1947, by and between the parties and herein referred to as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to, on and subsequent to December 15, 1947, F. T. Simrell owned and occupied Relief Position No. 1-A which called for the following assignments:

Monday, December 15, "WF" Office—8:00 A.M. to 4:00 P.M.
Tuesday, December 16, "WF" Office—4:00 P.M. to 12 Midnight
Wednesday, December 17, "BY" Tower—4:00 P.M. to 12 Midnight
Thursday, December 18, (Rest Day)
Friday, December 19, "BY" Tower—12:01 A.M. to 8:00 A.M.
Saturday, December 20, "WF" Office—12:01 A.M. to 8:00 A.M.
Sunday, December 21, "BY" Tower—8:00 A.M. to 4:00 P.M.

"BY" Tower, an around-the-clock, seven-day-week operation, employed the following persons with assigned hours as indicated.

F. T. Simrell was taken off his cycle assignment to cover the position of Towerman at BY Tower, Binghamton, account R. Rosengrant being off due to sickness. Taking F. T. Simrell off his regularly assigned cycle position to cover a position of an employe off account of sickness is permissible under Article 15 of the current agreement with the Telegraphers, quoted above. Your Board has ruled that sickness is an emergency. F. T. Simrell, as the statement of facts show, was paid for all services performed on December 17, 18, 1947. Mr. Simrell did lose pay for December 16, 1947, account time lost transferring from his cycle position to the position at BY Tower, and the Carrier's records do not show that Mr. Simrell was paid for that date, however, he is entitled to the day's pay.

Neither J. H. Simrell nor R. Fancher were deprived of any work on December 17 and 18, 1947, as claimed. Both men held regularly assigned positions at BY Tower, Binghamton, and were paid as provided for under Article 24, Guarantees, of the current Telegraphers' Agreement.

The claim is without merit and it is respectfully requested that it be denied.

OPINION OF BOARD: The Employes contend that F. T. Simrell owned and occupied Relief Position No. 1-A which called for the following assignments:

Monday	December 15, "WF" Office	8:00 A.M. to 4:00 P.M.
Tuesday	December 16, "WF" Office	4:00 P.M. to 12 Midnight
Wednesday	December 17, "BY" Tower	4:00 P.M. to 12 Midnight
Thursday	December 18, (Rest Day)	
Friday	December 19, "BY" Tower	12:01 A.M. to 8:00 A.M.
Saturday	December 20, "WF" Office	12:01 A.M. to 8:00 A.M.
Sunday	December 21, "BY" Tower	8:00 A.M. to 4:00 P.M.

The Employes further state that "BY" Tower is an around-the-clock, seven-day week operation, employing the following persons with assigned hours as indicated:

J. H. Simrell	8:00 A.M. to 4:00 P.M.
R. Fancher	4:00 P.M. to 12 Midnight
R. Rosengrant	12:01 A.M. to 8:00 A.M.

On December 16th F. T. Simrell was held off his regular relief assignment. The Employes make a claim for a day's pay of \$10.64 because the Carrier violated Article 24.

Article 24 reads:

"A regularly assigned employe shall receive one day's pay within each twenty-four hour period, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than eight hours as per location, except on his rest day when occupying positions covered by Section 1 of Article 8, or on his rest day and holidays when occupying positions covered by Section 2 of Article 8.

This rule shall not apply in cases of reduction of force where traffic is interrupted by conditions beyond the control of the Company.

NOTE: It is understood that the term 'conditions beyond the control of the Company' has reference to acts of Providence, such as floods, fires, washouts, etc., but does not contemplate such matters as train failures or lack of business."

The Carrier violated Article 24 of the effective Agreement and shall pay the Claimant F. T. Simrell, one day's pay of \$10.64.

The Employees further contend that due to the illness of R. Rosengrant on December 17th and 18th, F. T. Simrell was required to work Rosengrant's position, 12:01 A.M. to 8:00 A.M. at "BY" Tower; that F. T. Simrell was paid eight (8) hours at straight time for December 17th, and time and one-half for eight (8) hours (his regular rest day) for December 18th. The Employees claim that F. T. Simrell should be allowed an additional eight (8) hours at time and one-half for December 17th, which represents the eight (8) hours' service performed outside of his regular assignment.

The Carrier contends that under Article 15, they had a right to work F. T. Simrell on the Rosengrant assignment, due to Rosengrant's illness, and due to the fact that there were no relief employees available, an emergency existed.

Article 15 reads:

"Employees holding temporary or regular assignments will not be required to do relief work except in cases of emergency. When required to perform such emergency service, employees shall be paid the higher rate of the two positions, and in addition shall be allowed actual necessary expenses incurred for lodging and meals, and shall be paid at the straight time rate at that paid for the day for time consumed traveling between the temporary or regular assignment and the emergency assignment.

Traveling time shall be paid for the initial and final trips only, except that if the distance is such and the employee so elects (subject to the approval of the Company) daily travel time shall be allowed in lieu of lodging expenses.

No time shall be lost because of this emergency service, and in no case will less than one day's pay be allowed for each twenty-four hours held away from regular or temporary assignments.

NOTE: Claims for travel time and/or expenses will be promptly filed on proper company forms by the employee or his representative."

Under this rule the Carrier had a right to assign F. T. Simrell to the Rosengrant position at "BY" Tower. This claim will be denied.

The Employees state that on December 17th and December 18th the Carrier denied to J. H. Simrell and R. Fancher the right to perform four (4) hours' overtime service at "BY" Tower on each day and that the Carrier shall now pay to each Claimant at the overtime rate four (4) hours for December 17th and four (4) hours for December 18th.

The Carrier contends that under the Hours of Service Law it must exert every means at its command to avoid violation of the law even in the face of an emergency, before it can avail itself of the exception. The Carrier was able to fill the position under Article 15 without violating the Agreement between the parties or the Hours of Service Law.

Some awards have upheld similar claims, where the Carrier filled the vacancy using an employee outside the Scope of the Agreement. That did not happen in this claim as the employee used was a regularly assigned occupant of a relief position who was used by the Carrier in an emergency under Article 15.

The Carrier did not violate the terms of the Agreement. This part of the claim will be denied.

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

Claim (1) should be sustained, claim (2) should be denied and claim (3) should be denied.

AWARD

Claim (1) sustained, claim (2) denied, claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.