

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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

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

1. The Carrier violated the provisions of the Telegraphers' Agreement when and because on Sundays, July 6 and 13, 1947, it required R. D. Moyer to vacate a position in "Z" Office, Scranton, to which he was temporarily assigned, and perform rest day relief service at Northumberland, Pennsylvania;

2. In consequence thereof the Carrier shall now additionally pay R. D. Moyer four hours at straight time rate for each of said days, plus the provisions of Rule 15 (a); and

3. In further consequence thereof the Carrier shall now pay to J. W. Blud, the regular incumbent of the Northumberland position, eight hours at time and one-half for each day, July 6 and 13, 1947.

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

July 1 through 14, 1947, R. D. Moyer was assigned to a temporary vacancy in the "Z" Office, Scranton, vice T. J. Sheppard on vacation. This was a seven-day position—Sunday was the assigned rest day and such rest day was included in a regular relief position.

J. W. Blud was the regular incumbent of a Northumberland seven-day position—Sunday was the assigned rest day and such rest days were not included in a regular relief position; instead they were protected from the extra list on a Sunday-to-Sunday basis. On July 6 and 13, 1947, in the absence of an available unassigned extra employe, the Carrier required R. D. Moyer to vacate his temporary position in "Z" Office, Scranton, and perform rest day relief service on the Northumberland position at straight time rate. The provisions of Rule 15 (a) were not allowed. J. W. Blud, the incumbent of the Northumberland position was ready and willing to perform service on these rest days which were assigned to his position.

POSITION OF EMPLOYES': As indicated briefly in the Employees' Statement of Facts, T. J. Sheppard was the regular incumbent of the seven-day

The claim of J. W. Blud for eight hours at time and one-half for July 6 and 13, 1947, is without substance.

J. W. Blud was the regular incumbent of the position at Northumberland. The rest day of that position was Sunday. The position on Sunday was covered by an extra man which is permissible under Article 1, Section 1, Second paragraph of the agreement of November 20, 1946, quoted hereinabove. J. W. Blud had no monetary loss. The position at Northumberland prior and subsequent to July 6 and 13, 1947 was covered by extra men when available on Sundays, the rest day of the assignment.

It is respectfully requested that these claims be denied.

OPINION OF BOARD: R. D. Moyer was assigned to a temporary vacancy in the "Z" Office, Scranton, relieving T. J. Shepard on vacation during the period July 1 through July 14, 1947. This was a seven-day position and Sunday was the assigned rest day. J. W. Blud was the regular incumbent of the Northumberland seven-day position. Sunday was also the assigned rest day of this position but this rest day was not included in a regular relief position but was protected from the extra list. On Sundays, July 6 and 13, 1947, the Carrier required R. D. Moyer to perform rest day relief work on the Northumberland position at the straight time rate.

Since R. D. Moyer occupied the temporary position in "Z" Office, Scranton, for more than seven consecutive days, he was entitled to receive the time and one-half rate when required to work on the rest days of the position. Award 4774.

Claimant Moyer, holding a temporary assignment, should not have been required to do this relief work since no emergency was shown to have existed. The Carrier is required to pay the allowances set forth in Rule 15 (a). R. D. Moyer was not an extra employe and the rest day work, not having been assigned to a regular relief position or protected by an extra employe, belongs to J. W. Blud, the regular occupant of the Northumberland position. He is entitled to be compensated at the pro rata rate. Awards 2346, 2823, 3049, 4037, 4179, 4246, 4233, 4571, 4616, 4728 and 4847.

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

AWARD

Claim (1) sustained, Claim (2) sustained, Claim (3) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October 1950.

Dissent to Awards 5048 and 5049, Dockets TE-4833 and TE-4856

These awards err in allowing claimants the benefits provided for in Rule 15 (a) while at the same time holding no emergency (covered by Rule 15 (a)) was shown to have existed.

/s/ C. P. Dugan

/s/ A. H. Jones

/s/ R. H. Allison

/s/ C. C. Cook

/s/ J. E. Kemp