

Award No. 5177

Docket No. TE-5034

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh and West Virginia Railway Company that

(1) the Carrier violated the Agreement of April 1, 1946, which covers the establishment of assigned rest days and the use of employes and their compensation on such assigned rest days, holidays and Sundays; and,

(2) that claimant W. A. Albaugh occupying the position of third trick operator, Mingo, Ohio, shall be compensated for eight (8) hours at the time and one-half rate account the Carrier improperly blanking the position of third trick operator at Mingo, Ohio, a seven (7) day position, Saturday, March 13, 1948.

EMPLOYEES' STATEMENT OF FACTS: There exists an agreement between the parties effective November 1, 1936, amended, as to rules relating to this particular claim by an agreement made April 1, 1946.

Claimant Albaugh regularly worked the third trick assignment, hours 12:30 A. M., to 8:30 A. M., Sunday, Monday, Tuesday, Wednesday, Thursday and Friday each week. He worked these days on March 6, 7, 8, 9, 10, 11 and 12.

The Carrier blanked this position Saturday, March 13 and transferred the relief employe to Hopedale to relieve an employe not coming within the scope of the agreement between the parties.

POSITION OF EMPLOYEES: As previously stated in the Employees' Statement of Facts, W. A. Albaugh was regularly assigned to the third trick position as telegrapher at Mingo, Ohio, a 7 day per week position, hours 12:30 A. M., to 8:30 A. M., rest day Saturday. Claimant Albaugh worked his position Sunday through Friday, March 7 to 12 inclusive, 1948. On the following day, March 13, the employe scheduled to relieve Albaugh was diverted from his regular assignment to relieve on another position not under the telegraphers' agreement, and this 7 day third trick position at Mingo was blanked on that day. The duties of this position are such that it is recognized and regularly assigned as a 7 day position, therefore, it is necessary to the continuous operation of the railroad.

The following rules of the telegraphers' agreement are invoked in this dispute:

for other than time and one-half is an invitation to the Carrier to violate the agreement knowing that by doing so they will save four hours, which would have been due the claimant had the rule been observed.

Recently in 4387 your Board said:

"It is a fundamental Rule, we think, that seven day positions necessary to the continuous operation of the carrier must be assigned seven days per week, unless a specific provision of the Agreement authorizes a contrary course * * *."

We do not think it necessary to further burden the record with quotations from Awards of this Board on a point which has been consistently upheld; the employees have supported their claim fully and it should be sustained.

CARRIER'S STATEMENT OF FACTS: There are two tricks assigned at Mingo, Ohio, a first trick with hours 8:30 A. M. to 4:30 P. M. and a third trick with hours 12:30 A. M. to 8:30 P. M. The claimant was assigned to the third trick. Saturday, March 13, 1948, the day for which the claim herein is made, was the claimant's rest day. The regular relief employee was not available, as he had been assigned to another position that day. There were no available extra men and the position of third trick Telegrapher was not filled. No other person was instructed to perform the work on the third trick, and according to our records no such work was performed.

There are on file with the Third Division copies of the Agreement between the parties to this dispute effective November 1, 1936 and the so-called Rest Day Agreement between the parties of April 1, 1946. There is no rule requiring that a position must be filled when the incumbent is not available, when no extra employee is available and when the job is not filled. On the contrary, it has been the long established practice on this Carrier to leave such a position unfilled under these circumstances. The claimant suffered no loss of work in this instance.

In addition, in this particular case, the practice of leaving the position unfilled was agreed to by the General Chairman. Our evidence is the General Chairman's letter to the Superintendent of Transportation dated March 13, 1948, reproduced herewith as Carrier's Exhibit "A". The following appears in the third paragraph of the General Chairman's letter:

"It is agreed that a job can be blanked on the assigned rest day as long as no work remains * * *"

POSITION OF CARRIER: The Carrier was not obligated under the Agreement to call the claimant when the third trick regular relief employee was not available and when no extra employee was available.

The Employees now wish to reverse the established practice and intent of the Agreement by seeking an interpretation from your Honorable Board which would, in effect, be a new rule requiring payment **at the rate of time and one-half** to other regularly assigned employees who have completed their own assignments whenever an assigned employee is not available and no extra relief employee is available and the position is not filled. The Agreement does not now require that the Carrier be so penalized.

Changes of practices where no rule exists, or the establishment of new rules, may only be obtained through negotiation between the Employees and the Management, and the Carrier respectfully requests that your Honorable Board so rule. The Carrier respectfully requests that the claim of the Employees herein be denied in its entirety.

(Exhibit not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned at Mingo, Ohio, to work 12:30 A. M. to 8:30 A. M., Sunday through Friday with Satur-

day as rest day. On Saturday, March 13, 1948, the Carrier used the assigned relief employe on a position not within the scope of the Telegraphers' Agreement and blanked the relief position on that day. The position occupied by claimant was assigned under the provisions of Article 1, Section 1 (a), Agreement of April 1, 1946, which provides:

"(a) An employe occupying a position requiring a Sunday assignment of the regular week day hours shall be given one (1) rest day without pay in each consecutive period of seven (7) days. The rest day on such position shall be assigned and shall be the same day of each week, but may be changed to meet service requirements by giving not less than seventy-two (72) hours written notice to the employes affected. If such employe is required to work on his assigned rest day, he shall be compensated for such service at the rate of time and one-half with a minimum of eight (8) hours. When the rest day is not Sunday, work on Sunday will be paid for at pro rata rates."

We held in Award 5176 that positions assigned under the foregoing rule could not be blanked on any one of the days of the assignment. What we said in that award applies here in principle and a violation of the Agreement occurred when the Carrier blanked the rest day assignment on the day in question. There being no extra man available, claimant was entitled to the work.

The pro rata rate is allowed on the principles announced in Awards 4244, 4571, 4645.

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 the Agreement was violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1950.