

Award No. 5193  
Docket No. TE-5207

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Robert O. Boyd, Referee.

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS  
BOSTON AND MAINE RAILROAD**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad, that

(a) The carrier violated the terms of the Telegraphers' Agreement when it blanked the position of ticket-agent and operator at Old Orchard Beach, Maine, and failed to furnish relief on each Wednesday, June 29 and July 6, 1949; and

(b) In consequence of such improper action the carrier shall pay senior idle extra man Eastman a day's pay of 8 hours for work denied June 29, and senior idle extra man Scott a day's pay of 8 hours for work denied on July 6, 1949.

**JOINT STATEMENT OF FACTS:** There is an agreement in effect between the parties that is on file with this Board dated August 9, 1944. June 3, 1949, Superintendent Came, Portland Division, advertised several positions, one of which was at Old Orchard Beach. This advertisement was:

"No. 23. Ticket Agent and Operator, Old Orchard Beach  
8:00 A. M. to 4:00 P. M.  
48 hours @ \$1.39 ½ per hour  
Relief Day—Wednesday  
Summer job commencing about June 20th."

On June 16, 1949 Superintendent Came addressed successful applicant for the position:

"Dover, N. H., June 16, 1949.

G. H. Hamor  
Ticket Agent & Operator  
Old Orchard Beach

You are assigned summer position of ticket agent and operator at Old Orchard Beach, as per vacancy notice No. 23.

The hours will be 9:00 A. M. to 6:00 P. M., one hour out.

Relief day Wednesday. and a relief man will not be assigned to cover. Acknowledge.

(Sgd.) C. A. CAME.

cc—Mr. G. B. Morrill  
P. Brill."

The claim was then appealed to the Supervisor of Wage Schedules who also declined the claim.

The claim was handled in conference on October 26, 1949, and failing of settlement is herewith submitted to the Third Division, National Railroad Adjustment Board.

**POSITION OF CARRIER:** No rule in the Carrier's Agreement with the Order of Railroad Telegraphers will or can support this claim.

The Organization has not mentioned any rule on the property except that Local Chairman Brill, in a letter dated July 12, 1949 wrote—

"I wish you to consider this a complaint as required by Article 27 of the Telegraphers' Agreement."

Article 27 reads—

"Relief will be granted upon complaint and investigation if employees are found to be overworked."

This rule obviously does not apply to the claims of Eastman and Scott. They are not claiming to be overworked. They are claiming pay because they were not worked at all. Article 27 cannot support the claim.

No other rule has been mentioned in discussions on the property. It is settled that the claimant has the burden of presenting some theory which will entitle him to prevail. See Third Division Awards Nos. 3523 and 2568. So far the claimants have not presented any theory which would entitle either of them to prevail.

The claim should be denied.

**OPINION OF BOARD:** The Carrier bulletined a summer job 9:00 A. M. to 6:00 P. M., one hour out for lunch, with Wednesday the relief day. The bulletin stated no relief man would be assigned to cover the rest day. The claim is for two days (Wednesdays) when the position was not filled. Claimants rely on the following provisions of the Agreement:

Article X:

"Employees will be relieved from services one day each calendar week if relief employees are available.

An employee required to perform service on his relief day will be paid at the rate of time and one-half."

and Article XVII (a):

"Sufficient relief men will be supplied to meet all reasonable demands."

It is the contention of the Petitioner that under Article X, the Carrier was bound to fill the position on the assigned rest day either by a relief man, if available, or by the occupant of the position. We do not believe this was the intended meaning of this rule. In effect, the Petitioner is claiming that the rule requires a seven-day assignment with a rest day only when relief is available. This construction of this rule is in direct opposition to Article IV which guarantees six days' pay per calendar week.

The more reasonable interpretation of Article X is that the rule is intended to guarantee a rest day each calendar week and authorizes the Carrier to fill the seventh day, or rest day, with a relief man, if available. But if the occupant of the assignment is required to work, no relief being available, he will get time and one-half for the seventh day. No rule has been found in the Agreement on this property commanding the Carrier to fill all positions seven days each week.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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

The Carrier did not violate the Agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.