

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad Company that:

(a) The Carrier violated the rules of the Telegraphers' Agreement when it blanked the position of Operator J. Singletary in "GO" Relay Office, Norfolk, Virginia, November 1, 2 and 3, 1950, requiring Singletary to perform relief work on Assistant Manager's position, instead of using Operator L. G. Parker, who was available and willing for this service; and

(b) That L. G. Parker shall be paid for eight hours at over-time rate of pay of the Assistant Manager's position November 1, 2 and 3, 1950.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of October 1, 1944 is in effect between the parties to this dispute. Positions covered by Telegraphers' Agreement in "GO" Relay Office, Norfolk, Virginia are:

Position	Assigned Hours	Assigned Rest Days	Employee
Manager	8 A. M.—4 P. M.	Saturday-Sunday	Baker
Asst. Manager	4 P. M.—12 M. N.	" "	Parron
Operator	5 A. M.—1 P. M.	" "	Parron
"	10 A. M.—6 P. M.	" "	Tee
"	1 P. M.—9 P. M.	" "	Joyner
"	5 P. M.—1 A. M.	" "	Eubanks
"	8 A. M.—4 P. M.	Monday-Tuesday	Parker
"	4 P. M.—12 M. N.	Monday-Tuesday	Singletary

The work in "GO" office is of such volume on Wednesdays, Thursdays, and Fridays that more employees are assigned service on those days than on other days of the week. Wednesday, November 1, 1950 about 10:30 A. M. Asst. Manager Parron notified Manager Baker by telephone he was sick and unable for duty. Baker then asked Operator Parker if he would also work the Assistant Manager's hours to which Parker replied in the affirmative. About 11:30 A. M. Baker reported the matter by telephone

The carrier has shown conclusively that it did not violate any rule of the Telegraphers' Agreement in this dispute. It has shown that the use of Singletary on Parron's position was pursuant to Rule 26 as there were no extra operators available and beyond a shadow of doubt it has shown that there was no rule to prohibit the blanking of Singletary's position. Therefore, there is absolutely no basis for nor contractual support of the instant claim and carrier urges your Honorable Board to accordingly deny it.

The carrier affirms that all the data in this submission has been discussed with or is well known to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On Wednesday, November 1, 1950, at about 10:30 A. M. Assistant Manager Parron called in that he was sick and unable to work. The Assistant Manager's hours were from 4:00 P. M. until 12:00 M. N.

Shortly after this call was made, Manager Baker asked Operator Parker, whose hours were from 8:00 A. M. until 4:00 P. M. if he would work the Assistant Manager's position upon completion of his own work hours. Parker agreed to this, but some time prior to 4:00 P. M. Manager Baker was instructed to blank the regular assignment of Operator J. Singletary, whose hours were the same as those of the Assistant Manager, and have Singletary work the Assistant Manager's position. Thus, Singletary's position was blanked and he filled the position of Assistant Manager for three days.

This is not a claim by Singletary, the employee whose position was blanked, but a claim by Operator Parker for eight hours at overtime rate of pay of the Assistant Manager's position for the three days in question.

Rule 9 of the Agreement provides that "Employees will not be required to suspend work during regular hours or to absorb overtime."

Rule 26 provides, in part, that "Regular assigned employees will not be required to perform relief work except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in regular compensation, shall be paid an amount sufficient to reimburse them for such loss * * *."

The argument of the Claimant is that he should be entitled to compensation, due to the fact that Rule 9 was violated when Singletary was forced to suspend work during his regular hours, thereby absorbing overtime work in which the Claimant was entitled by virtue of his seniority and availability.

It is the contention of the Carrier that the action taken here was not in violation of any rule of the Agreement, and that what was done was contemplated and provided for in Rule 26.

Award No. 5242 of this Division of the Board held that there was no emergency as a result of the employee failing to report for work and failing to work his assignment. In that case, the position of the employee who failed to show up for work was blanked.

There is no showing that an emergency existed here. The Carrier contends that such an emergency was existent. Carrier was put on notice in ample time to fill the position without doing violence to Rule 9.

The Carrier makes mention of a proposed new rule which was submitted by the General Chairman on January 24, 1947 and which set out in some detail the provision that under conditions such as we have here that

the position must not be blanked, but that it should be divided among the regular assigned employees in the event there is no qualified extra employee available.

That proposal should be given little weight in our determination of this claim. We are concerned with the rules as they existed on the date of the alleged violation. The proposed rule of January 24, 1947 if considered at all, would only indicate to us that it was a proposal, in detail, providing for nothing new except that the time should be divided among the regular assigned employees when such an absence occurs.

The claim for pay at the overtime rate is not proper. We concur with the reasoning of Award 4244 of this Division of the Board.

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 by the Carrier.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of September, 1952.

Dissent to Award 5943, Docket TE-5749

This is another award which distorts beyond recognition the intent and purpose of the framers of the rule governing absorption of overtime.

There was no overtime involved or worked. The work of the position blanked 4:00 P. M. to midnight was amply taken care of by the forces covered by the agreement on duty between 4:00 P. M. and midnight without any hardship being imposed on them. See Award 5625.

/s/ C. P. DUGAN

/s/ J. E. KEMP

/s/ W. H. CASTLE

/s/ R. M. BUTLER

/s/ E. T. HORSLEY