

Award No. 6291

Docket No. TE-6293

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad; that,

J. E. Sease, regularly assigned Operator-Clerk at 'FK' Tower, South Fork, with tour of duty from 3:00 P.M. to 11:00 P.M., who on August 11, 1950, was required to suspend work at 'FK' Tower and to report at 'SO' Tower, South Fork where he performed service from 4:00 P.M. to 5:30 P.M., prior to returning to his regularly assigned position at 'FK' Tower, shall be allowed an additional day's pay at the time and one-half rate for services performed at 'SO' Tower on August 11, 1950, in accordance with the provisions of the applicable agreement.

EMPLOYES' STATEMENT OF FACT: The Claimant holds a regular assignment as Operator-Clerk at FK Tower, South Fork, on the Pittsburgh Division, second trick 3:00 P.M. to 11:00 P.M. August 11, 1950, the claimant reported for duty on his regular position and performed service as follows: Operator-Clerk at "FK" Tower 3:00 P.M. to 4:00 P.M.; Block Operator at "SO" Tower, South Fork; 4:00 P.M. to 5:30 P.M.; and Operator-Clerk at "FK" Tower, 5:30 P.M. to 11:00 P.M.

The service at "SO" Tower was necessitated by the regular assigned second trick Block Operator at that point reporting for duty late. Claimant was paid the higher of the two rates of pay, which was his regular rate at "FK" as Operator-Clerk.

POSITION OF EMPLOYES: There is an Agreement in effect between the parties, Regulations effective September 1, 1949, Rates of Pay effective February 1, 1951.

Employees covered by this Agreement are divided into Group 1 and 2. Group 1 covers Agents and Assistant Agents not involved in this case; Group 2 covers Telegraph Department Employees who are involved in this case, therefore, it will be understood when Group 2 employees or Group 2 positions are referred to in any part of this case, it will have reference to the employees or positions involved.

The positions on first, second, and third tricks at both "FK" and "SO" are seven (7) day positions, properly protected by Relief Operator positions for rest days of each employee.

In addition to Award No. 4681, upon which the Employees rely, the General Chairman also asserted, during the handling of this dispute on the property, that Award No. 5364 of your Honorable Board was applicable to the dispute herein involved. It will be noted that Award No. 5364 involved an interpretation of another Schedule Agreement in effect on another Carrier. It would appear from an analysis of the facts in Award No. 5364, that the monetary payments provided for in the rule covering the use of regular assigned Telegraphers to perform relief or emergency work on other assignments contained in the Agreement between the parties involved therein are dissimilar to the provisions of Regulation 4-M-1 of the Schedule Agreement in effect between the parties involved in the instant dispute. Moreover, the claim for an additional day which was there involved and was not sustained, the Board holding that the employee involved could properly perform the duties of both positions. The Carrier submits, therefore, that such Award is inapplicable here.

In summary, the Carrier has shown that the Claimant did not perform service in excess of one eight-hour period, or on more than one tour of duty on August 11, 1950. The Carrier submits that in accordance with the previous settlements between the parties involving similar circumstances (see Exhibits "C" and "D"), and in accordance with the provisions of Regulation 4-M-1 of the applicable Agreement, the Claimant has been properly compensated in the instant case, and as a consequence thereof, the claim of the Employees is without foundation and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "Grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

All data contained herein have been presented to the employee involved or to his duly authorized representative (Exhibits not reproduced.)

OPINION OF BOARD: Claim is made on behalf of J. E. Sease, for an additional day's pay at the regular rate for work required to be performed on two positions, August 11, 1950.

On a Joint Statement of Agreed Upon Facts, dated September 15, 1950, the parties are in accord, that the employee was the regularly assigned Operator-Clerk, second trick, with hours from 3:00 P. M. to 11:00 P. M. at 'FK' Tower, and that during his tour of duty on the date alleged he was assigned to duty at 'SO' Tower from 4:00 P. M. to 5:30 P. M., when he returned to his regular assignment on 'FK' Tower. The record shows he was compensated for eight hours' pay, at the higher rate of the two positions involved, which was the rate he was drawing on his 'FK' position.

The Carrier contends he was properly compensated under Regulation 4-M-1 (a) and (b), as provided by the current Agreement between the parties.

The Organization contends the employee is entitled to, in addition to pro rata pay for his regular assignment, an additional day's pay at the punitive rate, for the service performed at 'SO' Tower, and rely on Regulations 4-A-1, 4-D-1, 4-F-1 (c) and (e), 4-G-1 and 4-M-1 (a), as well as Decision # 58, Pennsylvania Reviewing Committee and also Award 4681, as supporting such contention.

We cannot agree with the Organization that Decision #58 is applicable to the case before us; this for the reason that the employee involved there was an extra employee and the work performed was in excess of the regular eight-hour assignment and covered overtime, which is not similar to the situation before us herein, nor can we consider an employee holding a regular assignment, and used to fill a temporary position during his regular eight-hour tour of duty, as an extra employee at the time of his temporary assignment. For the same reasons Award 4681 is not applicable herein.

From a review of the record and a study of the regulations, we conclude that Carrier did have the authority under Regulation 4-M-1 (a) and (b) to assign the employee to a temporary vacancy during the time involved in his regular assignment. This Regulation simply gives Carrier the right to assign an employee having a regular assignment to a temporary assignment and allows him a rate of pay at whichever is the higher of the two positions. No claim has been made for overtime pay in either position in which work was performed, and this Board is not authorized or permitted to revise or amend the governing rules of the Agreement. Nor can we speculate as to what the intention of the parties may have been when the Agreement was written. We are required in determining the rights of the parties to interpret the Regulations as they are written in the Agreement, and we have no authority to modify or amend the provisions in any way. This must be done only by negotiation between the parties. This has been held in numerous Awards by the Board, and we cite Nos. 5703, 2491 and 4439 as expressing the holding of the Board.

The Organization contends that Regulation 4-F-1-c covers work performed on two positions within a 24-hour period, and should be so applied to the claim before us. Regulation 4-F-1-c provides:

"If an employee performs work on two positions within a 24-hour period, and, under any provisions of this Agreement, he has a prior right to be used in both of such positions, he shall be paid, etc. . . ."

Here before us is an employee holding a regular assignment at "FK" Tower, required within the period of his regular assignment to perform duties at "SO", on a temporary assignment basis by Carrier. He holds no prior right to the assignment at "SO" Tower, and nothing in the record is shown to indicate to the contrary. If the claimant herein had a prior right to the position at "SO" Tower, the claim should be sustained, and the employee would be entitled to a day's pay at the pro rata rate for the duties performed at "SO" Tower.

The Board is of the opinion the employe not having shown he has a **prior** right to be used in both such positions, the claim should be denied, since Regulation 4-F-1-c is not applicable.

We are of the opinion that Regulation 4-G-1 is inapplicable for the reason the employe was not required to suspend work during regular hours, as his work was continuous within the period of his regular assignment.

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 Carrier did not violate the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.