

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

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 provisions of the Telegraphers' Agreement when and because it did not fill the vacant North Adams agency position June 17 through June 29, 1952, by an employee covered by the said Telegraphers' Agreement; and

(b) in consequence thereof and for the days involved R. Beaudry shall be paid the difference between what he earned as ticket agent-telegrapher and what he would have earned as General Agent; E. J. Boni shall be paid the difference between what he earned as assistant ticket agent-telegrapher and what he would have earned as ticket agent-telegrapher, and the senior idle spare employee on a day-to-day basis shall be paid a day's pay at the assistant ticket agent-telegrapher rate of pay.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of August 1, 1950, by and between the parties and referred to herein as the Telegraphers' Agreement is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement at Page 36 lists at North Adams the following positions, pertinent to this proceeding, and the rates of pay:

General Agent (Minor)	\$354.61 per month
Ticket Agent-Telegrapher	1.75 per hour
Assistant Ticket Agt-Telegrapher	1.552 per hour

These rates have been subsequently increased in accordance with national pat-terms. The position of General Agent was first included in the Telegraphers' Agreement August 1, 1950; the monthly rate comprehends 208 hours of service per month. The three positions as listed were owned by Harris, Beaudry and Boni, respectively.

Mr. Harris, occupant of the General Agent position, was off duty account illness June 17 through June 29, 1952, and according to the Carrier's letters his position was blanked for that period of time, but the Organization was informed from a reliable source that the station cashier performed the

"The Railroad proposes to fill such positions, when necessary, by the selection of a properly qualified employe who comes within the scope of your Agreement. While filling a General Agent's position, as above outlined, the selected employe will be compensated in the same manner as the regular incumbent.

"No employe will be compelled to accept the work of filling these temporary absences. Before assigning anyone to perform such work, the Railroad will consult with the General Chairman. This procedure establishes no precedent and no claims will be made regarding suspension of work, etc., in this case.

"If the above meets with your approval, will you kindly return one copy with your approval.

Yours very truly,

(Sgd.) WILLIAM B. MERRY
Supervisor of Schedules

(Sgd.) L. H. ROCKWOOD,
General Chairman"

(Emphasis Carrier's).

It is to be noted that Carrier agreed to use an employe coming within the scope of the Telegraphers' Agreement "when necessary" to fill General Agents (Minor) positions. Carrier asserts that in the circumstances involved in this docket, it was not necessary to fill the General Agent's position at North Adams during the short period of his illness, June 17 through June 29, 1952. Claim should be denied.

All data and argument herein has been brought to the attention of Petitioner.

OPINION OF BOARD: The Organization here contends, that the Carrier violated the scope rule during the period while the General Agent (Minor) was off sick; That the Carrier blanked the position without right and; that the duties of the position were taken over by the chief clerk. It is further argued on behalf of the Order of Railroad Telegraphers that the letter agreement of August 14, 1950 gives no discretionary right to the Carrier to fill or not fill a vacancy for a short period due to illness.

From the facts at hand we are of the opinion that the Organization has failed to prove that any duties of the agent were taken over by the chief clerk, cashier, clerk or yard clerk. There is no proof as to who took the lead in the absence of the agent, or what specific agents duties were performed by whom. There is a dispute between the parties as to whether there are two shifts or not at North Adams as required by the Rule. The parties are also in disagreement over the meaning to be applied to the words "when necessary" appearing in the letter agreement of August 14, 1950. It is also noted that the application of Rule 12 (k), is to be had without committing the Railroad to any additional expense. These questions are not decided in this Opinion because of the failure of the factual proof noted above.

The facts proven in this docket fail to show any violation of the governing Rules. Accordingly we conclude that the claim should be denied.

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

That the parties to this dispute waived oral hearing thereon;

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 proof fails to show any violation of the governing rules.

AWARD

That the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1953.