**Award No. 6802**

**Docket No. TE-6741**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Francis J. Robertson, Referee**

---

## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## THE NEW YORK CENTRAL RAILROAD COMPANY (Line West)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (West of Buffalo), that:

(1) The Carrier violated the agreement between the parties when it failed to properly notify; J. L. Merkling that he was not to work the position which had been previously assigned to him, on September 26, 1951; G. C. Morgan, that he was not to work the position which had been previously assigned to him, on November 1, 1951; and A. G. Kroft, that he was not to work the position which had been previously assigned to him, on January 6, 1952.

(2) The Carrier shall now compensate J. L. Merkling, G. C. Morgan and A. G. Kroft, for eight hours at punitive rate of time and one-half for each of these days respectively.

**STATEMENT OF FACTS: Case No. 1.** J. L. Merkling was a regular employe assigned to the third shift in "UK" Tower, Kendallville, Indiana, on District No. 5, with hours 11:55 P. M. to 7:55 A. M., and rest days Tuesdays and Wednesdays.

By order of the Carrier he was instructed at 3:15 P. M., September 25, 1951 to "Work your days off September 25 and 26 answer."

Claimant worked Tuesday, September 25th and went off duty at 7:55 A. M., Wednesday, September 26th, without receiving any further instructions. At 1:18 P. M. Wednesday, September 26th, contrary to the employes' interpretation of the agreement, and in particular Article 11, claimant received the following instructions:

"Merkling take day off today September 26".

Claimant's position, third "UK" Tower, Kendallville, Indiana, was filled by Extra Operator Deetz on Wednesday, September 26th. Deetz worked second "WX" Tower, Waterloo, Indiana, Tuesday, September 25th, and before going off duty at "WX" he was instructed to go to "UK" to work third shift the following night, Wednesday, September 26th.

and, third, this regular occupant of the position." Awards 4775, 4815, 4817, 4883, 5177.

"There exists no justification for departing from cited precedents."

The carrier submits that the principle recognized by all such awards, when weighed and evaluated with the circumstances of claims similar to those in the instant docket, clearly shows that all such claims are without substance. In the instant case either an extra or regular relief employe performed the work on the rest days involved.

**CONCLUSION:**

The carrier has shown that:

1. There was no violation of rules;
2. Article 11, cited by the Organization, does not support the claims;
3. Claimant regular operators were not "displaced from a position" as contemplated by Article II; their regular positions were not disturbed or affected;
4. Article 11 was intended only to provide that an employe **actually displaced** by a senior employe be notified while on the job concerning the date the displacing employe would take over the position;
5. Awards of the N.R.A.B. uphold the carrier's position;
6. The claims are built up on untenable premises at variance with reasonable application of the rules and should be denied.

All evidence and data set forth in this dispute have been considered by the parties in conference. (Exhibits not reproduced.)

**OPINION OF BOARD:** The claims in this docket are based upon an alleged failure to comply with the provisions of Article 11 (a) and (b) of the Agreement. In two instances (Merkling and Kroft) the employes were notified to work their rest days and after having worked the first rest day were advised subsequent to completion of that day's work not to report for duty on the second day. In the other (Morgan) Claimant (who was instructed to work his second rest day (Thursday) until further notice) was advised on Thursday, November 1, 1951, that he was not to work that night.

Article 11 (a) and (b) provide as follows:

"(a) An employe before being displaced from a position which has been acquired by another employe by bid or otherwise will be notified before going off duty as to the date on which he is to be displaced.

"(b) The provisions of this article will also apply to an employe displaced by an employe returning to duty after absence."

It is apparent that the issue involved in the determination of the three claims is identical. That issue, simply stated, is whether or not regularly assigned men who have been instructed by the Carrier to work on one or both of their rest days must be notified prior to the completion of the preceding tour of duty that they will not be required to perform rest-day work.

The gist of the employe contentions is that the Claimants were displaced from a position by another employe who acquired that position "otherwise"

than by bid and consequently that Article 11 (a) applies. Carrier contends that Article 11 was designed to protect employes from loss of time by reason of the exercise of seniority rights and in effect applies only when employes are actually to be displaced from positions to which they are regularly assigned. It contends that the term "otherwise" was used in the rule to cover employes acquiring positions under the operation of the Temporary Vacancy Rules 27 (c) or under operation of other Agreement rules.

We cannot agree with the contentions of the employes. The instant Agreement contans the standard forty-hour week provisions with respect to the problem of furnishing relief on rest days of the assigned employe. It provides that the least desirable solution of the problem would be to work some regular employes on the sixth or seventh days at overtime rates and thus withhold employment from additional relief men. This Board has consistantly held that work on rest days should be assigned in the first instance to the regularly assigned relief man if there be such; secondly to an extra or unassigned employe and finally if such employes are not available, to the regular occupant of the position on an overtime basis. Consequently, the regularly assigned employe has no right to employment on his relief day when either the relief man becomes available or an extra man becomes available. Accordingly, with those men available he has nothing to be displaced from on his relief day. It is reasonably conceivable that if the Carrier failed to assign the available relief or extra employe, that it would then be faced with a claim on behalf of either of them. We conclude that Article 11, paragraphs (a) and (b) are inapplicable.

No other rule of the Agreement has been cited to us nor do we find any which would govern in this situation. It is true that at least one of the Claimants (Kroft) was considerably inconvenienced in holding himself ready for work until about 10 minutes before assigned starting time when he was notified at home by telephone not to report. There is no rule in the Agreement which affords pay for this type of inconvenience, The remedy is to negotiate a rule to cover the situation. (See Award 5916)

**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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1954.