

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

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

(a) The Carrier violated the provisions of the Agreement between the parties hereto, when it failed and refused to compensate telegrapher C. E. Holstein at the rate of time and one-half for work performed Sunday, January 6, 1952, and Monday, January 7, 1952, on swing assignments at Rumer and Arbuckle, West Virginia, after having completed his full work week of forty hours.

(b) The Carrier violated the provisions of said Agreement when it forced telegrapher J. S. Treease to remain idle on January 6 and January 7, 1952, account being improperly relieved by telegrapher C. E. Holstein.

(c) Telegrapher C. E. Holstein shall now be paid the difference between the straight time rate which he was paid and the rate of time and one-half to which he was entitled under the provisions of the agreement between the parties, for work performed on the sixth and seventh days, January 6 and 7, 1952 of his work week.

(d) Telegrapher J. S. Treease be paid eight hours each day at the pro rata rate for January 6 and January 7, 1952, because not used instead of telegrapher Holstein.

EMPLOYES' STATEMENT OF FACTS: Claimant C. E. Holstein is the regularly assigned relief operator holding Relief Position No. 35. Beginning Tuesday, January 1, 1952, he began a requested temporary vacancy on the first shift at Arbuckle, West Virginia. Claimant Holstein worked the first shift at Arbuckle on January 1, 2, 3, 4 and 5. On January 6 and 7, Claimant Holstein was permitted or required to work the first shift at Rumer and the first shift at Arbuckle, which were workdays of Relief Position No. 35. Claimant J. S. Treease was an extra man who filled Relief Position No. 35 in the absence of Claimant Holstein, and was deprived of working this position on January 6 and 7, when he was improperly relieved by Claimant Holstein. The regularly assigned man (Mr. L. B. Fultz) of first shift Arbuckle returned to work on January 8. The positions involved are diagramed below for simplicity:

Brooklyn Shops attached to and followed him while he was being used to temporarily fill the other position would bring about abnormal working conditions. It would require carrier to pay claimant on an overtime basis for a regular shift on the position he was temporarily occupying if such was worked on a rest day of his regular assignment. On the other hand, if a rest day of the position being temporarily filled fell on a work day of the regular assignment then carrier would be required to work claimant on his regular assignment on that day. In other words, if the working conditions of his regular assignment followed claimant then he should have worked his regular assignment on November 23, 24 and on November 30 and December 1, 1950. This, we think, was neither the intent nor purpose of the rules as written."

SUMMARY—

The carrier has conclusively shown that:—

1. No Agreement rule was violated;
2. The provisions of Articles 10, 24 and 27 cited by the Organization lend no support whatever to the claims in this docket;
3. There is no Agreement rule or understanding which prohibits or restricts a regular employe (Holstein in this case) from returning to his own regular assignment and resuming work thereon on the day after he works a temporary vacancy which terminated;
4. The temporary vacancy on the Agent-Operator assignment at Arbuckle terminated at conclusion of work Saturday, January 5, 1952;
5. The Sunday, Jan. 6th, and Monday, Jan. 7th, 1952 rest days for which claims are made on behalf of Relief Operator Holstein and Extra Operator Treese were the rest days of the Agent-Operator assignment at Arbuckle;
6. Saturday, January 5, 1952 was the last day on which the regularly assigned Agent-Operator at Arbuckle was absent;
7. Sunday, January 6th, and Monday, January 7th, 1952, worked by Relief Operator Holstein, were two of the five work days of his regular Saturday-through-Wednesday relief assignment which was his before he moved to the Agent-Operator temporary assignment at Arbuckle and which he continued to hold after the temporary vacancy at Arbuckle terminated Saturday, January 5, 1952;
8. Agreement rules uphold the carrier's position;
9. National Railroad Adjustment Board Awards support the position of the carrier;
10. The claims in this docket are not valid under existing rules, are based on untenable premises and should be denied.

All evidence and data set forth in this submission have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Article 27 (a) 14 provides in part as follows:

"* * *, an employe holding a temporary vacancy at his own request may not return to his regularly assigned position until the

temporary vacancy terminates or he is displaced from the temporary vacancy."

Starting December 10, 1951 Claimant Holstein was assigned to a temporary vacancy at his own request. The assigned work week of such position was Tuesday through Saturday, with rest days Sunday and Monday. On Saturday, January 5, 1952, the regular occupant of such position advised his supervisor that he would return to work at the start of his work week on the following Tuesday. The issue presented by this claim is, when did that temporary vacancy terminate.

In this case the regular occupant of the position gave notice that he would return to work on the first day of the next work week and the temporary holder of the vacancy had worked all of the work days in that work week. We have held that a regularly assigned employe transferred to a temporary vacancy is entitled to the rest days of the temporary vacancy because rest days are a condition of and attached to a position, Award Nos. 5811 and 6408.

In view of those awards and since it is clear that the regular occupant of the position involved was not returning to work until the first day of the next work week, it is apparent that the temporary vacancy did not terminate until the end of the assigned work week and that the regular occupant did not displace the temporary holder of the position until the start of the next work week. Hence the claim must be sustained.

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 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 agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.