

Award No. 6977
Docket No. TE-6917

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)

Case No. 1

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:

1. Carrier violated the Agreement between the parties when it failed and refused to pay E. R. Andrews at the rate of time and one-half for eight (8) hours' service performed on the 21st of September, 1952, at "BK", Corning, Ohio.
2. Carrier shall now compensate E. R. Andrews for the difference between the straight time paid and the time and one-half rate for services performed as aforesaid.
3. Carrier further violated the Agreement, when on the 21st of September, 1952, it failed to use extra employe H. S. Hunt to perform rest day relief services at "BK", Corning, Ohio, on the first shift instead of E. R. Andrews.
4. Carrier shall now compensate H. S. Hunt at the straight time rate for eight hours on September 21, 1952.

Case No. 2

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:

1. Carrier violated the Agreement between the parties when it failed and refused to pay J. A. Evans at the rate of time and one-half for eight (8) hours' service performed on the 2nd and 3rd days of August, 1952, at Point Pleasant, Ohio.
2. Carrier shall now compensate J. A. Evans for the difference between the straight time paid and the time and one-half rate for services performed as aforesaid.

3. Carrier further violated the Agreement, when on the 2nd and 3rd days of August, 1952, it failed to use extra employe J. E. Simpson to perform rest day relief service at Point Pleasant, Ohio, on the first shift, instead of J. A. Evans.
4. Carrier shall now compensate J. E. Simpson at the straight time rate for eight hours on August 2 and 3, 1952.

STATEMENT OF FACTS: Case No. 1. E. R. Andrews is regularly assigned to Relief No. 21, programmed to work as follows: first shift "BK", Corning, Ohio, Sunday and Monday; second shift "BK" Tuesday and Wednesday; third shift "BK" Thursday. His rest days are Friday and Saturday.

Claimant Andrews by his own request was assigned to a temporary vacancy relieving the Agent-Operator, E. S. Bingham, at Glouster, Ohio, beginning September 8, 1952. The Agent-Operator at Glouster had a work week beginning Monday, Saturday and Sunday being the assigned rest days. Andrews filled that position September 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1952, while the regular man, E. S. Bingham was on vacation. Mr. Andrews was off on the rest days September 13, 14 and 20, 1952. The Carrier required or permitted Andrews to return to Relief Assignment No. 21 and work on Sunday, September 21, 1952, the second rest day of his assigned work week which began on Monday, September 15. Mr. H. S. Hunt was the senior idle extra employe who had not worked forty hours in this work-week and was available and entitled to work Relief Assignment No. 21 on September 21, 1952, first shift "BK".

The following is a graphic account in chronological order of the temporary vacancies and employes here involved:

Regular Owner: E. S. Bingham	Regular Owner: E. R. Andrews
Agent Operator	Regular Relief
Glouster, Ohio	Assignment No.
	21

Temporary Vacancies

Agent-Operator Assignment	Regular Relief Assignment No. 21
Glouster, Ohio	

September 1952

Temporarily filled by:

Temporarily filled by:

Monday	Sept. 8	E. R. Andrews		
Tuesday	Sept. 9	E. R. Andrews	R. A. Hines	(2nd "BK")
Wednesday	Sept. 10	E. R. Andrews	R. A. Hines	(2nd "BK")
Thursday	Sept. 11	E. R. Andrews	R. A. Hines	(3rd "BK")
Friday	Sept. 12	E. R. Andrews		(Rest Day)
Saturday	Sept. 13	(Rest Day)		(Rest Day)
Sunday	Sept. 14	(Rest Day)	R. A. Hines	(1st "BK")
Monday	Sept. 15	E. R. Andrews	R. A. Hines	(2nd "BK")
Tuesday	Sept. 16	E. R. Andrews	R. A. Hines	(2nd "BK")
Wednesday	Sept. 17	E. R. Andrews	R. A. Hines	(2nd "BK")
Thursday	Sept. 18	E. R. Andrews	H. S. Hunt	(3rd "BK")
Friday	Sept. 19	E. R. Andrews		(Rest Day)
Saturday	Sept. 20	(Rest Day)		(Rest Day)
Sunday	Sept. 21	(Rest Day)	E. R. Andrews	(1st "BK")

EMPLOYEES' STATEMENT OF FACTS: Case No. 2. J. A. Evans is regularly assigned to rest day relief No. 8, programmed to work as follows: first shift Point Pleasant, Ohio, Saturday and Sunday; second shift Point Pleasant, Monday and Tuesday; third shift Point Pleasant, Wednesday. The rest days are Thursday and Friday.

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.** (Emphasis added)

In view of what we have said we find the claim to be without merit."

• Board Awards such as those cited here, particularly the underscored portions of the quoted excerpts, definitely support the carrier's position that there is no merit whatsoever in the claims of regular Operator J. A. Evans and regular Relief Operator E. R. Andrews.

SUMMARY

The carrier has conclusively shown that:—

1. No Agreement rule was violated;
2. The provisions of the rules 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 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 Monday-through-Friday assignment at Pt. Pleasant (Case No. 2) terminated Friday, August 1, 1952;
5. The two days, Saturday, August 2, and Sunday, August 3, 1952, for which claims are made in Case No. 2, were the 1st and 2nd days of Relief Operator Evans' Saturday-through-Wednesday work week and were worked by him;
6. The temporary vacancy as Agent-Operator at Glouster terminated Friday, September 19, 1952;
7. The one day, Sunday, September 21, 1952, for which claims are made in Case No. 1, was the first day of Relief Operator Andrews' Sunday-through-Thursday work week and was worked by him;
8. Claims on behalf of Extra Operators (Hunt, Case No. 1 and Simpson, Case No. 2) under Article 21 have no status because there was no extra work to be performed on the days for which claims are made and Article 21, therefore, is not applicable;
9. Agreement rules uphold the carrier's position;
10. National Railroad Adjustment Board Awards support the position of the carrier;
11. 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: Except for names, dates and places the facts here are the same as those in our Award No. 6976, so that award governs the disposition of this claim.

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

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.