

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymod Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD. BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that:

(a) The Carrier violated the terms of the Agreement between the parties when it required L. C. Peacock, regularly assigned Assistant Agent at Lacona, New York, with hours 1:00 P. M. to 9:00 P. M., to supend work on his own assignment for the purpose of performing relief work at:

Adams Center, New York, another assignment with hours of 11:00 P. M. to 7:00 A. M., March 5, 6 and 7, 1951, and

Brewerton, New York, another assignment with hours of 3:00 P. M. to 11:00 P. M., March 9, 1951.

(b) The Carrier further violated the terms of said agreement when it required R. E. Waterman, regularly assigned to the Tenth Rest Day Relief assignment, said assignment being:

Remsen, N. Y., 7:00 A. M. to 3:00 P. M. Saturdays and Sundays

Marcy, N. Y., 7:30 A. M. to 4:30 P. M. Mondays

Remsen, N. Y., 3:00 P. M. to 11:00 P. M. Tuesdays and Wednesdays

to suspend work on his own assignment for the purpose of performing relief work at Barneveld, New York, another assignment with hours of 8:00 A. M. to 5:00 P. M., Tuesday, March 13, and Wednesday, March 14, 1951.

(c) The Carrier shall compensate L. C. Peacock the equivalent of eight (8) hours at the straight time rate of his regular assignment (Lacona, N.Y. hours 1:00 P. M. to 9:00 P. M.) for each day that he was required to suspend work on said assignment; plus the equivalent of eight (8) hours at the time and one-half rate

each day that he was required to work at Adams Center, N.Y., March 5, 6 and 7, 1951, outside regular hours.

The Carrier shall further compensate L. C. Peacock the equivalent of eight (8) hours at the straight time rate of his regular assignment because required to suspend work on said assignment; plus the equivalent of two (2) hours at the time and one-half rate for time worked at Brewerton, N. Y., March 9, 1951, outside his regular hours.

(d) The Carrier shall compensate R. E. Waterman the equivalent of eight (8) hours at the straight time rate of his regular assignment (Tenth Rest Day Relief assignment—Rensen, N. Y., hours 3:00 P. M. to 11:00 P. M.) for each day that he was required to suspend work on said assignment; plus the equivalent of seven (7) hours at the time and one-half rate for each day for the time worked at Barneveld, N. Y., March 13 and 14 1951, outside of his regular hours.

Such payments to be in addition to compensation already received by the claimants for the days involved.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties to this dispute, and which is hereinafter referred to as the Telegrapher's Agreement, dated July 1, 1948, is in effect between the parties. A copy thereof is on file with the Third Division of the National Railroad Adjustment Board. The violations involved in this dispute took place on the St. Lawrence Division of the Carrier.

Mr. L. C. Peacock, was regularly assigned to the second shift (Assistant Agent) position at Lacona, N. Y., with hours from 1:00 P. M. to 9:00 P. M. The Carrier suspended him from that position on March 5, 6 and 7, 1951 and required him to work the third shift (Assistant Agent) position at Adams Center, N. Y., hours 11:00 P. M. to 7:00 A. M. He was again suspended from his regular position and required to work the second shift (Assistant Agent) position at Brewerton, N. Y., hours 3:00 P. M. to 11:00 P. M., on March 9 1951.

Claimant, Mr. R. E. Waterman, the regularly assigned incumbent of the Tenth Rest Day Relief Assignment, scheduled to work Tuesday, March 13, and Wednesday, March 14, 1951, from 3:00 P. M. to 11:00 P. M., at Remsen, N. Y., was suspended from his regular assignment and required on these two dates to work the agent's position at Barneveld, N. Y., from 8:00 A. M. to 5:00 P. M., with one hour out for lunch.

The Organization protested the action of the Carrier in removing claimants from their regularly assigned positions in non-emergencies, for the purpose of performing relief work on positions other than those to which they were properly entitled, and which had been acquired by seniority right. Penalty claims were made for infringement upon the rights of these employees. The claim was denied by the Carrier.

POSITION OF EMPLOYES: As set forth in the Statement of Facts, this claim is predicated on the Carrier's action in declining to pay the claimants, L. C. Peacock and R. E. Waterman, in accordance with the terms of the Telegraphers' Agreement. The Carrier has denied the proper payment to these employees because it is claimed there were no extra men available to perform the duties at Adams Center, N. Y., Brewerton N. Y. and Barneveld, N. Y., on the dates here involved, and because of heavy troop movements over that portion of the St. Lawrence Division. The Carrier contended that it had the right under such circumstances to use regularly assigned employees at will without being obligated to make any penalty payments to such employees.

3. Your Board has sustained the position of Carrier that Article 13 is controlling of the situation present in the instant cases.

No facts or arguments have been herein presented that have not been made known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Peacock was regularly assigned assistant agent at Lacona, N. Y. On March 5, 6 and 7, 1951, he was required to perform relief work on the assistant agent position at Adams Center, N. Y., instead of working his own position, because of the illness of the incumbent of the Adams Center position. On March 9, Peacock was required to relieve the assistant agent position at Brewerton, N. Y., instead of working his own position, because the Brewerton incumbent was ordered by the military to take a physical examination on that date.

Claimant Waterman was regularly assigned to the Tenth Rest Day Relief Assignment, relieving at Remsen and Marcy, N. Y. On March 13 and 14, 1951, he was required to perform relief work on the position of agent at Barneveld, N. Y., instead of working his own position, because of the illness of the agent at Barneveld.

Claim is made under Article 4—Overtime, Article 5—Calls, Article 9—Suspension, Article 12—Guarantee, and Article 13—Regular Employees Performing Relief Work, for 8 hours at regular rate for each day Claimants were required to work assignments other than their own, and also for compensation at time-and-one-half for hours actually worked on the days in question which were outside the hours of their regular positions.

It has been held in awards of this Division involving the same Petitioner and a different *District of the same Carrier* that, where there were vacancies due to illness and no qualified extra employees were available to fill them, that an emergency existed; and that such vacancies could be filled by removing regularly assigned employees from their positions and assigning them to perform relief service on the vacant positions, without violating the Agreement. Awards 2511, 3132, 3438, 3439, 3440. These awards were based upon Article 13, which provided in pertinent part:

“(a) Regularly assigned employees will not be required to perform service on other than their regular positions except in emergencies.”

In the instant case, Article 13 (a) in pertinent part is identical.

Petitioner contends that there was no emergency here, respite the admitted illness of the incumbents, because there were two student operators available to perform the necessary relief service; it is also asserted that there were qualified operators off on their rest days who could have been called to fill the vacancies. Carrier asserts that the student operators were not yet qualified to relieve these positions; in the absence of any evidence to the contrary in the record, we must accept this judgment. Similarly, Carrier's statement that there were no regular employees on their rest days available to perform the required service is not controverted by any evidence. No name of any employee is suggested in the record as one who was off on his rest day and available to perform the required service on any of the dates in question. We think the facts and circumstances here as to the relief service performed because of illness are similar to those in the awards cited above, and that those awards require the denial of the present claims to that extent.

There remain the somewhat different circumstances under which Claimant Peacock relieved at Brewerton on March 9, 1951. The awards which holds that illness creates an emergency under Rule 13 and similar rules are based to a large extent on the fact that illness is unpredictable, sudden and not subject to prior planning and control. On the other hand, the Board held in Award 4626, between these same parties and involving the same rules, that a vacancy caused by the incumbent's going on vacation was not an emergency under Rule 13, even though no qualified telegrapher was available to fill the vacancy, since the necessity for the relief "was surely not a sudden or unexpected occurrence." Award 6015 involved different parties and circumstances, but discussed the question of what constituted an emergency in connection with requiring a regular employe to provide relief service. The Board there said: "We are not in accord with the Carrier that an emergency existed by Hood being inducted into the military service. Events of this nature are common and an everyday occurrence, as distinguished from sickness or accident, or some unforeseen occurrence that could not be anticipated."

The record is bare of any evidence as to whether Carrier had advance notice that the assistant agent at Brewerton had to take a physical examination on March 9. However, we feel justified in assuming that the agent had advance notice of this fact, since such is the usual practice, and that Carrier also knew about it in advance. We conclude, therefore, that the vacancy at Brewerton on March 9 was not an emergency and that Claimant Peacock is entitled to be paid eight hours at the straight time rate of his regular assignment for that date in addition to the pay he has already received. To sustain the claim for an additional two hours at time and one-half rate would be a double penalty; this part of the claim as to Brewerton is denied.

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 Employees 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 to the extent indicated in Opinion.

AWARD

Claim sustained in part and denied in part in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.