Award No. 9026
Docket No. TE-8346

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated the agreement between the parties hereto when it failed and refused to compensate F. J. Benson for May 30, 1955 (Memorial Day), in accordance with Article II, Section 1 of the August 21, 1954 Agreement.

2. Carrier shall be required to compensate F. J. Benson for 8 hours, at the pro rata rate, for the position of second shift P&L Junction Tower, in addition to any compensation previously paid for May 30, 1955 (Memorial Day).

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between the Lehigh Valley Railroad Company, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, governing rates of pay, rules and working conditions for employes covered thereby. The agreement was effective February 1, 1948, and is by reference made a part hereof as though copied herein word for word.

The dispute, submitted herein involves interpretation of the collectively bargained agreement was handled on the property in the usual manner up to and including the highest officer designated by Carrier in accordance with the provisions of the Railway Labor Act, as amended. Carrier's highest officer declined the claim, and the dispute remains unadjusted. This Board has jurisdiction of the parties and subject matter as provided in the Railway Labor Act, as amended.

Effective Monday, May 23rd, 1955, Urgel J. Drouin, regular incumbent, second shift towerman position at P&L Junction Tower was assigned temporarily, under Rule 21, to another position. Effective the same date Frank Benson, claimant herein, was assigned in accordance with Rule 22 to such position to work same during the absence of the regular incumbent.

"In the instant case the claimants had been removed from their regular assignments as the result of force reduction. Their seniority was not sufficient to permit them to displace regularly assigned employes. Following the claimants' separation from their regularly assigned positions, their take home pay from thence forward became irregular—dependent upon work of a temporary nature when such existed.

"The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein it is stated that '* * * each **regularly assigned** hourly and daily rated **employe** shall receive eight hours' pay * * *.' (Emphasis ours.) Thus, the agreement limits payment to regularly assigned employes and does not provide for payment to an employe who is temporarily filling a position."

It is significant that the claimant in the instant dispute, like claimants in the above Award, temporarily llled a position **during the absence of the regular assigned employe** and was not regularly assigned thereto in either instance.

There is no rule in the Agreement between the Employes and the Carrier or in Section 1 under Article II of the National Agreement dated August 21, 1954 which inferentially or otherwise sustains Employes' position in this dispute. To sustain such position would have the effect of writing a new rule for the parties. The authority of the Division is limited by statute to interpreting agreements as written. The Division has no authority to add to, take from, or amend rules, as this is a matter for negotiation between the parties themselves.

In conclusion, Carrier has shown that the claim in this dispute is without foundation under the Agreement and, therefore, should be denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim herein is made on behalf of the employe, holding a position on the extra list, for pay for one day, May 30, 1955 (Memorial Day), at the pro-rata rate. The employe for the day involved was paid for his service at the time and one-half rate, and relies upon the provisions of Article II, Section 1, of the National Agreement of August 21, 1954, and of Rule No. 22 of the effective Agreement between the parties to support his contention.

The facts of record before us do not support the contention of the Claimant. This Board has held in numerous Awards, and in situations similar to the facts here, that the claimant was not a regularly assigned employe.

From the facts before us, we are of the opinion that the employe was not a regularly assigned employe as alleged, and such claim is not supported by the rules relied on. We reaffirm the Opinion and Findings as made in Award No. 7978, and cited Awards, as applicable here.

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 claim is not supported by the record, nor did Carrier violate the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of October, 1959.