

Award No. 10397

Docket No. TE-8844

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Arthur Stark, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated Agreement when on June 27 to July 16, inclusive, 1955, it used an employe of another craft to relieve W. D. Sparks, Agent, Lebanon, Tennessee, for vacation.
2. Carrier shall compensate W. D. Sparks, monthly rated employe for the period June 27 to July 16 (inclusive), 1955, at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier, or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective May 1, 1924 and has been amended in many respects. The original agreement, as amended, is on file with this Division and is by reference included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Board under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

This dispute involves the question as to whether the Carrier violated the agreement between the parties when commencing on June 27, 1955, and continuing through July 16, 1955, it used an employe of another craft to relieve the Claimant for his vacation. The employe used was a Mr. E. M. DeMoss. Mr. DeMoss is a regular employe of the company, holding seniority as a Clerk and occupying a position covered by the agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks. It was the contention of the Carrier in handling this dispute on the property that it had the right to use whomsoever it pleased to provide vacation relief. It was the contention of the Employes that the vacation relief should have, under the circumstances involved in this case, been provided by an employe covered by the Telegraphers'

“Question 1: May an employe at his option forego the taking of a vacation, remain at work and accept pay in lieu thereof?”

“Answer: No.”

Employes are here urging that Carriers should have permitted what they had already agreed was not permissible.

Carrier was obligated to grant claimant a vacation with pay when it was found that he could be released therefor, under which circumstances he has no contractual rights to the work of the position during the period of the vacation. Claimant had contractual rights to return to his assignment at the end of the vacation period, but not during said period, and to the regular pay of his position during the vacation period, all of which was satisfied. He has not been deprived of any compensation nor has he suffered any loss, and the claim filed in his behalf is utterly devoid of support and wholly without merit. Carrier, therefore, respectfully requests that it be denied in its entirety.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employes and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employes' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to TE-8813. Claimant W. D. Sparks, Agent at Lebanon, Tennessee, was relieved by E. M. DeMoss, during his vacation period June 27 to July 16, 1955, inclusive. For the reasons set forth in our Award Number 10395 we hold that (1) this vacation assignment was improper, and (2) that Mr. Sparks should be granted pro rata pay for the period involved.

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 Employe involved in this dispute are respectively Carrier and Employe 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 has been violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1962.