

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Donald F. McMahon, Referee**

---

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**  
**SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland and Seattle Railway, that:

1. (A) Carrier violated the agreement between the parties when it required or permitted K. M. Eller, assigned Agent at Linton, Oregon, to suspend work during regular assigned hours, work off his regularly assigned position outside of his regularly assigned hours and work on his assigned rest days from August 21 through August 28, 1956.

(B) Carrier shall now compensate K. M. Eller, at the rate of the Agent position Linnton, an amount equal to the difference between what he was paid for this period and the following:

Eight hours pro rata on Tuesday, August 21, Wednesday, August 22, Thursday, August 23, Friday, August 24, Monday, August 27, 1956, account suspended.

Eight hours at time and one-half on Saturday, August 25 and Sunday, August 26, 1956, account rest days.

Seven hours at time and one-half on Tuesday, August 21, Wednesday, August 22, Monday, August 27 and Tuesday, August 28, 1956, account working outside assigned hours.

2. (A) Carrier violated the agreement between the parties when it required or permitted A. Christman, assigned to Relief Position No. 10, to suspend work during regular assigned hours, work off his regularly assigned position outside of his regularly assigned hours and work on his assigned rest days from August 31 through September 28, 1956.

(B) Carrier shall now compensate A. Christman at the applicable rates of Relief Position No. 10 an amount equal to the

difference between what he was paid for this period and the following:

Eight hours pro rata on Saturdays through Wednesdays, September 1, 2, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 1956, except Monday, September 3 (Holiday — Labor Day) 8 hours at time and one-half account suspended.

Eight hours at time and one-half on Fridays, August 31, September 7, 14, 21, 28, 1956, account rest days.

Eight hours at time and one-half on Saturdays, Sundays, Mondays and Tuesdays, September 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 1956, account working outside assigned hours.

3. (A) Carrier violated the agreement between the parties when it required or permitted J. R. McClain, assigned to Relief Position No. 7, to suspend work during regular assigned hours, work off his regularly assigned position outside of his regularly assigned hours and work on his assigned rest days from September 15 through September 28, 1956.

(B) Carrier shall now compensate J. R. McClain at the applicable rates of Relief Position No. 7 an amount equal to the difference between what he was paid for this period and the following:

Eight hours pro rata on Saturdays, Sundays, Mondays, Tuesdays, and Fridays, September 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 1956 account suspended.

Eight hours at time and one-half on Wednesdays and Thursdays, September 19, 20, 26, 27, 1956 account rest days.

Eight hours at time and one-half on Tuesdays, September 18, and 25, 1956, account working outside regular hours.

**EMPLOYEES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and by this reference are made a part hereof.

#### CASE NO. 1

Carrier's Bulletin No. 65 issued July 30, 1956, advertised a six months' temporary vacancy on the position of Agent, Linnton, Oregon. Assigned hours 8:00 A. M. to 5:00 P. M. (one hour meal period), rate \$2.07 per hour, work days Mondays through Fridays and assigned rest days Saturdays and Sundays.

The successful applicant for the above bulletined position was K. M. Eller, who, at the time, held a regular assignment to Relief Position No. 10, which was made up by the following assignments:

Saturdays	— Day Ticket Agent, Vancouver 8:15 A. M. to 4:15 P. M., rate \$2.18 per hr.
Sundays	— Day Ticket Agent, Vancouver 8:15 A. M. to 4:15 P. M., rate \$2.18 per hr.

**OPINION OF BOARD:** There are three separate and distinct claims involved here by separately named employes, described in the Statement of Claim, as follows:

Claim No. 1, on behalf of K. M. Eller.

Claim No. 2, on behalf of A. Christman.

Claim No. 3, on behalf of J. R. McClain.

It is the contention of the Organization, that the employes, were improperly required by Carrier to perform service, on positions not the positions assigned them by bulletins, within the period required by the provision of:

“Rule 16(d),

“Assignments to temporary positions or vacancies shall be made within five (5) days from close of Bulletin and employe shall be transferred to the position within ten (10) days thereafter.”

All the positions involved here are temporary vacancies as provided by the Agreement between the parties.

The Organization contends that Carrier, violated the provisions of Rule 16(d) of the Agreement, by its failure to comply with such provision, and makes claim on behalf of named employes, for the difference in compensation between what said employes were paid and the amount they would have earned had they been properly transferred to their newly assigned positions, in addition claim is made for compensation at the time and half rate for service on rest days, and additional claim is made at the time and one-half rate for working outside their assigned hours.

Carrier, for its support in denying the allegations of the Organization, takes the position that Rule 16(d) makes no provision for a penalty, of any nature, when an employe is transferred to a temporary vacancy or position, beyond the time as provided in Rule 16(d) of the Agreement before us. Carrier also argues that the said claims as alleged, and the demands made upon Carrier, exceeds any loss, either financial or directly suffered by the employes, and requests a denial award be made by the Board.

From the record before us here, it is shown, in respect to each of the following named employes:

K. M. Eller, successful bidder for position-temporary vacancy at Linnton. Assigned position by Carrier, August 10, 1956. Transferred to Linnton, August 29, 1956 by Carrier.

A. Christman, successful bidder for Ticket Agent position at Vancouver, awarded position, for temporary vacancy, on August 21, 1956. Due to lack of qualification to hold position, the employe was not transferred to Vancouver until September 29, 1956.

J. R. McClain was successful bidder on Bulletin #71, for temporary position on Position No. 7, and was awarded such position

September 4, 1956, but was not transferred to such position at Vancouver until September 29, 1956.

There is no evidence here before us, to support the contention that the employes were required to suspend work or to absorb overtime, nor is there evidence that the employes are entitled to compensation as provided by Rule 4(a) and (b) as alleged. There is no evidence before us, that any of the employes performed any work on the rest days of the position they occupied during the period of time involved in the claims here.

Rule 16(d), among many paragraphs of which have no application here, does make provision, that assignments to temporary positions or vacancies shall be made within five (5) days from close of the bulletin and employe shall be transferred to the position within ten (10) days thereafter. Carrier did not comply with this provision as the record reveals here, as in the claim of Mr. Eller, Carrier did not transfer this employe until 19 days after he was awarded the position, or nine (9) days after Carrier was required to make the transfer. Mr. Christman was transferred twenty-nine (29) days after Carrier was required to make his transfer, and Mr. McClain was transferred fifteen (15) days after Carrier was required to make this transfer. Carrier did violate the provisions of Rule 16(d) by its failure to make the transfers within the time required by the rule. No penalty being provided for in the rule, the only compensation to which the employes could be entitled to, would be for the difference in pay for what each employe has earned on the position he was engaged, and what he would have earned on the position to which he was awarded, had Carrier transferred them properly in accordance with the rule. This applies to employes Eller and McClain.

As to employe Christman, the record shows when he bid in the position as Day Ticket Agent, Vancouver, he was not qualified to accept such position, and prevailed upon Carrier to allow him to remain on his Relief Position No. 10, until such time as he did qualify for Day Ticket Agent position at Vancouver. We conclude that employe Christman bidding in a position for which he was not qualified until September 29th, or thirty days from the date he was awarded the position, that Carrier violated Rule 16(d), in delaying his transfer at his own request. He brought about such transfer delay by his own act. This claim is denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did violate the Agreement in respect to Claims 1 and 3.

Claim 2 should be denied.

AWARD

Claims 1 and 3 sustained in accordance with the Opinion and Findings.

Claim 2 denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schuly  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1963.