

Award No. 11490

Docket No. TE-10222

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 the Agreement when, beginning December 18, 1956 and continuing through January 7, 1957, Monday through Friday, the first trick operator-clerk position at Cookeville, Tennessee was blanked.

2. Carrier shall compensate the senior employe idle, extra in preference, for eight hours pay for each day, Monday through Friday, December 18, 1956 through January 7, 1957, at the rate of pay of \$2.038 per hour.

3. Carrier violated the Agreement when, beginning December 19, 1956 the regular assigned second trick operator-clerk, Mr. Hershel Hunter at Lebanon, Tennessee, was used to protect the first trick operator-clerk position while the assigned first trick operator-clerk, Mr. J. A. Driver, was absent leaving the second trick operator-clerk position at Lebanon blanked and the Carrier continues to violate the Agreement so long as this position remains blanked.

4. Carrier shall compensate the senior employe idle, extra in preference, for eight hours' pay for each day, Monday through Friday, December 19, 1956 to date and for so long hereafter as this second trick operator-clerk position at Lebanon, Tennessee, remains blanked, at the rate of pay of \$2.146 per hour, this rate of pay being applicable to first trick operator-clerk position at Lebanon, Tennessee, which was the primary vacancy and the position to which relief man was and is entitled. The rate of pay applicable to second trick operator-clerk position at Lebanon, Tennessee, is only \$2.05 per hour.

EMPLOYES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements 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

In appealing the decision of the General Superintendent-Chief Engineer in these claims to the Supervisor of Wages by letters of April 26 and 25, 1957, respectively, the General Chairman mentioned Mrs. Juanita Alley as having been available for the positions referred to, but aside from the impossibility of her filling two positions concurrently at stations 58 miles apart this claim in her behalf was not filed within 60 days from the date of the occurrence on which the claim or grievance is based nor is she in any manner involved in these claims, either of which effectively bars her from any consideration under the above quoted provision of the so-called Time Limit Rule. Furthermore, while there is no requirement to furnish an extra employe to fill a position, the Carrier does not consider that Mrs. Alley was available for either of these positions during the periods they were blanked for the reasons stated by the Supervisor of Wages in his letters of August 16, 1957 (Carrier's Exhibits Nos. E-6 and F-6).

Carrier further submits that no showing has been made that any employe or employes have been deprived of any compensation or suffered any loss or damage which, according to Award No. 6288 involving same parties, is another sound reason for denial of claims of this kind.

This cause is without merit from any standpoint and should be denied in its entirety.

Carrier is making this submission without having been furnished copy of Employees' 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 issue or issues.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This controversy involves two separate claims. Petitioner filed the claim embracing the position of the first trick operator-clerk at Cookeville, Tennessee, for the "senior employe idle, extra in preference" on February 13, 1957, and filed the second claim on January 30, 1957, embracing the position of second trick operator-clerk at Lebanon, Tennessee, for the "senior employe idle, extra in preference." Each of these claims arose out of absences in these positions occurring simultaneously on December 19, 1957.

Carrier in its primary denial of each of these claims contended that the claims submitted did not meet the requirement of Article V, Section 1(a) of the National Agreement of August 21, 1954, effective between the parties, in that the Claimants were not specifically named nor were they easily and clearly identified and asked for a dismissal of each of these claims.

On April 25, 1957, and subsequent to the date of the primary denial of the claims by the Carrier, Claimant, Mrs. Juanita Alley, was named and identified by the General Chairman as the senior extra employe idle, available and qualified and he asserted that she should have been called and permitted to work the vacancy at Cookeville. The General Chairman similarly

asserted that she was the senior employe idle, available and qualified and should have been called and permitted to work the vacancy at Lebanon, Tennessee. No other employe was specifically named in the correspondence nor is any name other than Claimant Alley's mentioned in the record.

We must, therefore, dismiss from our consideration such part or portions of the claims, herein, as purport to relate to employes other than the Claimant Alley. Award 10458, involving this same Petitioner and this same Carrier, has determined that a claim containing practically identical language that we are here concerned with—"Carrier shall compensate senior, idle telegrapher (extra in preference)"—does not specifically name the Claimants nor are they clearly identified, as required in Article V, Section 1(a) of the National Agreement of August 21, 1954.

Assuming that Claimant Alley was, ultimately, specifically identified on the property after Carrier's primary denial of the claims. We are, then, presented with a most unusual situation. She is making two claims, one for a violation of the Agreement which she alleges occurred at Cookeville and for which she should be compensated and another for a violation which she alleges occurred at Lebanon and for which she should be compensated. It is conceded that Lebanon and Cookeville are 58 miles apart, and as both absences with which we are concerned occurred the same day, obviously Claimant Alley could not have physically worked both these positions and, consequently, we cannot allow her compensation for both. She has nowhere either indicated a preference for one claim nor anywhere indicated of the abandonment of the other. This creates an uncertainty that we cannot here resolve.

In addition to the foregoing, there are fact questions as to Claimant Alley's availability we cannot satisfactorily resolve from the record. All of which makes it impossible to arrive at a satisfactory conclusion on the merits.

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 Claims should be dismissed.

AWARD

Claims dismissed in accordance with 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 June 1963.