

**Award No. 11652**  
**Docket No. TE-13840**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Charles W. Webster, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE PENNSYLVANIA RAILROAD COMPANY**

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

1. That C. E. Bishop's rights under the applicable Agreement were violated when the Carrier refused to allow him to return to his position of block operator at Cross Cut Tower, assigned hours 7:00 A.M. - 3:00 P.M.

2. That the Carrier shall now be required to allow the claimant, C. E. Bishop, to return to his position at Cross Cut Tower and allow him payment for all working hours actually lost beginning on March 21, 1961 and continuing until the violation referred to in Part 1 of this claim has been corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to July 19, 1960, C. E. Bishop was the regularly assigned first shift Block Operator at Cross Cut Block Station, New Castle, Pennsylvania. As of that date Mr. Bishop was 44 years of age and had been in the Carrier's employ as a block operator for 18 years. On February 4, 1960 Mr. Bishop incurred a back injury while in the process of throwing a switch lever. He worked up to February 8, 1960; reported for physical examination by Company Doctor in Cleveland, February 16, 1960, and returned to duty February 22, 1960. On advise of his doctor he went on sick leave July 19, 1960. He remained on sick leave until he reported for work March 21, 1961 whereupon he was directed by the Supervising Operator to report to Carrier's Regional Medical Doctor for a "Return to Duty" card. He reported as directed, April 7, 1961; however, Carrier refused to re-assign him to his position.

Claimant is a Block Operator employed under the provisions of the Telegraphers' Agreement and was occupying a position covered by the Agreement. The Agreement provides as to "Definitions" that:

"The word 'employee,' as used in this Agreement, refers to employees covered by this Agreement and represented by the Organization signatory hereto.

\* \* \*

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss or deny the claim in this dispute.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all the same.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant in this case was injured on the job. The Organization first processed this claim on the ground that he should be restored to his original position. While the claim was being processed on the property the Organization, recognizing that the Claimant was not able to fill his former position shifted its ground and asserted that he should be reassigned pursuant to Regulation 2-T-1 which provides:

"2-T-1.

(a) If agreed to, in writing, by the Local Chairman and the proper officer of the Company, a permanently disabled employe may, if he is capable of performing the duties required, be assigned to a new position or to a vacancy or be placed in a position occupied by another employe. While holding such position or vacancy, the permanently disabled employe shall be compensated at the rate of the position he holds and shall not be permitted to bid on advertised positions or vacancies."

A reading of the above cited provision shows that the parties intended that before it went into effect that there should be a bilateral agreement acceptable to both sides. The record discloses that the Carrier was unwilling to agree. Therefore, the claim must be 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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1963.