

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN RAILWAY COMPANY**

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

1. Carrier violated the Telegraphers' Agreement when it required M. D. McNeely, regularly assigned relief Telegrapher-Leverman, to suspend work during the regular hours of his assigned position Floyd Street Tower, Louisville, Kentucky, January 6, 7, 13 and 14, 1957, and work third shift Telegrapher-Leverman position, Floyd Street Tower, Louisville, Kentucky.

2. Carrier shall compensate M. D. McNeely the difference between the pro rata rate he was paid and the time and one-half rate of pay to which he was entitled for each day he was required to work the third shift position, outside his regular assigned hours at Floyd Street, Louisville, Kentucky, January 6, 7, 13 and 14, 1957.

**EMPLOYES' STATEMENT OF FACTS:** Claimant M. D. McNeely is the regular assigned relief telegrapher-leverman at Floyd Street Tower, Louisville, Kentucky. His relief assignment with assigned hours is programmed as follows:

First shift	Saturday and Sunday	7:00 A. M. to 3:00 P. M.
Second shift	Monday and Tuesday	3:00 P. M. to 11:00 P. M.
Third shift	Wednesday	11:00 P. M. to 7:00 A. M.

Assigned rest days Thursday and Friday.

Mr. R. A. Chapman is the regular assigned third shift telegrapher-leverman at Floyd Street Tower, Louisville, Kentucky. His assigned work week begins on Thursday with rest days of Tuesday and Wednesday. His assigned hours are 11:00 P. M. to 7:00 A. M.

On Sunday, January 6, Monday, January 7, Sunday, January 13 and Monday, January 14, 1957, the Carrier removed R. A. Chapman from his position

off his regular assignment (the three day temporary vacancy in position No. 2160) and to use him to fill the second trick vacancy. At 11:45 P.M., when the third trick began, the Hours of Service Law had tolled as to Francis and he was available to fill that vacancy, and we say properly so.

We also believe the following to be applicable and controlling in principle.

"Treating Article X as a special rule, as we think it should be treated, it seems inconsistent to hold that it is to be regarded as an exception to the general rules in Article III and VII. No inequity results in such an application. The claimant lost no time, and was paid at the higher rate applicable to the two positions on which he worked \* \* \*.' We have heretofore set out Article X, Section 2-a referred to in the above award. See Awards 6768, 2511, 3132.

We conclude, from the record in its entirety and the awards herein cited or referred to that the Carrier did not violate the Agreement and the claim should be denied."

Thus the fact is established that claims identical in principle have heretofore been denied by the Board.

#### CONCLUSION

Carrier has effectively shown that:

- (a) The effective Telegraphers' Agreement has not been violated as alleged.
- (b) The ORT has heretofore conceded the point at issue. The accepted practice is to do exactly as was here done.
- (c) Claim is clearly a demand that the Board establish a new rule and condition of employment by a Board decision.
- (d) Claims identical in principle have been denied by prior awards of the Board.

Having heretofore recognized that it is without authority under the law to establish new rules or amend existing rules as here demanded by the ORT, and claim not being supported by the agreement, the Board has no alternative but to hold that the effective Telegraphers' Agreement has not been violated and make a denial award.

All evidence submitted in support of Carrier's position is known to employe representatives.

Carrier, not having seen the ORT's submission, reserves the right, after doing so, to reply thereto.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case is the same in all material respects as in Docket No. TE-10302, Award No. 11970. We adopt the opinion therein as determinative of the issues in this case.

**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 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 19th day of December 1963.