

Award No. 12779
Docket No. TE-11774

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway, that:

R. Imborski, regularly assigned occupant of the first-shift leverman's position Clybourn Tower, Chicago, Illinois, be paid a day's pay at the time and one-half rate of the position occupied when on February 9, 1959, a rest day of his position, he was called to fill a vacancy thereon in the absence of the regularly assigned rest day relief employee.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective May 1, 1937, and as amended.

R. Imborski, claimant, was on the date here involved the regularly assigned occupant of the first-shift leverman's position at Clybourn Tower, Chicago, Illinois. Service duties and operations necessary to be performed at Clybourn Tower are necessary seven days per week, thus bringing the position within the descriptive language of Rule 24½ (k) paragraph (1) viz., necessary to the continuous operation of the railroad.

Monday, February 9, 1959, is one of the assigned rest days of the claimant's position. Leverman Kile is the regularly assigned occupant of a rest day relief position which performs rest day service on the rest days of Claimant Imborski's position.

In order to have some authoritative source immediately available to whom the employees in the Towers of the Chicago Terminal area could appeal to under emergency conditions, such person was designated as the Tower Director at Lake Street Tower, Chicago Terminal Interlocking District.

On February 9, 1959, at or about 5:45 A.M. Leverman Kile called Lake Street Tower Director on the telephone and advised him because of acute weather conditions "I'll be late and don't know when I can get there." In

"SERVICE ON REST DAYS

(1) Towermen required to work or hold themselves in readiness for work on assigned rest day or days will be paid at rate and one-half with a minimum of eight hours."

Claimant in this case neither worked nor held himself in readiness for work since, after being called, and without being relieved by proper authority, he departed from Clybourn, thereby making himself unavailable for work.

There is no dispute whatsoever but that claimant never took up service on the assignment for which called, since the assignment was 8:00 A. M. to 4:00 P. M. and claimant left Clybourn prior to 8:00 A. M. There can be no dispute but that claimant did not hold himself "in readiness for work" since at 8:00 A. M. when Mr. Hite attempted to get in touch with him, he could not be reached. Claimant therefore neither worked nor held himself in readiness for work on his assigned rest day.

In the handling of this claim locally the Local Chairman admitted that the levermen were advised by the Bulletin attached as Carrier's Exhibit A that Mr. Hite had been appointed Supervisor of Levermen. The Local Chairman apparently attempted to contend, however, that because no office hours were mentioned, claimant was relieved of the necessity of securing authority from Mr. Hite prior to departing from the premises. There is no support whatsoever for this theory of the organization, particularly in view of the fact, as shown in Exhibit A, that all levermen were notified of both Mr. Hite's office and home telephone. There is no dispute whatsoever that the Director at Lake Street did not authorize claimant to leave Clybourn. This is shown conclusively by the fact that the Director told claimant:

"I don't know what to tell you but would suggest that you go home."

From this, claimant definitely knew that the Director was not the individual from whom he should secure authority, in addition to the fact that he also knew from the Bulletin of March 24, 1958 that such matters should be handled with Mr. Hite.

The case here before this Board is one, therefore, where, after being called, claimant departed from the Tower without proper authority, without securing release from his Supervisor, and without waiting at that point sufficient time to determine what was expected of him. While it was contended in the local handling of this case that claimant attempted to call Mr. Hite between 7:50 and 8:00, Mr. Hite was in his office from 7:45 until 8:00, during which time he received no such telephone call.

The carrier submits that the claim in this case, not being supported by schedule rules, should be denied in its entirety. The carrier further submits that the maximum amount to which claimant is entitled is for a call as provided in rule 27.

(Exhibits not reproduced.)

OPINION OF BOARD: Kile was regularly scheduled to work the first trick, Clybourn Tower assignment, February 9, 1959. He called the Tower Director and advised that he did not know whether he would be able to cover his assignment on account of the weather. He also said that if he were able

to cover his assignment, he would probably be late. The Tower Director contacted Hite, Supervisor of Levermen, who instructed the director to call the Claimant, Imborski, the regular first-trick leverman, to work on his rest day.

Imborski arrived at the Tower about 7:30 A. M. to work the 8:00 A. M. to 4:00 P. M. assignment, but discovered that the regular relief man, Kile had arrived at approximately 7:20 A. M. Kile claimed the right to work the assignment. After his arrival, Imborski called the Tower Director, advised him Kile was on the job, and asked what he should do. The director apparently told him that he didn't know, but that he would suggest that he go home. Prior to 8:00 A. M., Imborski departed from the position.

The claim involves an interpretation of which of two rules to apply to the facts.

Rule 24½. (k) (1) reads as follows:

"Towermen required to work or hold themselves in readiness for work on assigned rest day or days will be paid at rate and one-half with a minimum of eight hours."

Rule 27, reads as follows:

"Towermen required to report for duty and not used will be allowed compensation for all time held, with a minimum of two hours, at the rate of the position."

The employees urge that rule 24½, (k) (1) applies and that Claimant should be compensated for eight hours at rate and one-half. The Carrier contends that the Claimant did not work, nor did he hold himself ready for work, but in fact left before the work period began, and therefore should be compensated for no more than two hours at the rate of the position.

It is true that Claimant left the position before work actually began. However, we must remember that the Tower Director, even though he may not have been the proper person, was the one who advised Claimant to go home, and was also the same person who had called Claimant to report for work.

It would appear that the Tower Director should have inquired of the Supervisor as to what he should do under the circumstances; but having not done so, we cannot penalize the Claimant for this error.

It is our opinion that Rule 24½, (k) (1) is a specific rule which applies to rest days only and as such would take precedence over a general rule affecting the same subject matter. Therefore, we are of the opinion that Claimant should be paid for eight hours at rate and one-half.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.