

Award No. 12973
Docket No. TE-11816

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD
(Eastern District, Boston & Albany Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston & Albany Railroad, that:

CLAIM NO. 1

1. The Carrier violated the parties' Agreement when it failed or refused to compensate H. Soltysiak, second shift leverman telegrapher-clerk, East Somerville L. & F. Junction, at the time and one-half rate for services performed on Tuesday, March 10 and Wednesday, March 11, 1959, rest days of the position occupied.

2. The Carrier shall, because of the violation set forth above, compensate H. Soltysiak for the difference between the straight time rate paid and the time and one-half rate due for work performed on his assigned rest days.

CLAIM NO. 2

1. The Carrier violated the parties' Agreement when it failed to call the senior idle spare man to perform the services required on the second shift leverman telegrapher-clerk's position at East Somerville L. & F. Junction on Tuesday, March 10 and Wednesday, March 11, 1959, and instead used the regular occupant of the position.

2. The Carrier shall, because of the violation set out above, compensate senior idle spare man D. T. Knox, who was available and willing to perform the work, and who was at home as required by Rule 725 of the Operating Department Book of Rules, two days' pay at the pro rata rate of the second shift leverman telegrapher-clerk's position at East Somerville L. & F. Junction.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective August 1, 1948, and as amended.

When Claimant Knox acknowledged Mr. Woodbury's message, he reported off duty as follows:

"Boston, Mass., 10 - 12 Noon

LBW Spfld.

Reporting off sick today one day only.

D. T. Knox"

The claim of the Organization on behalf of spare towerman Knox as being available and ready for work on March 10, 1959 definitely lacks merit inasmuch as Carrier's records indicate that claimant had "marked off" for this date. For this reason Carrier respectfully requests your Board to discount the claim of March 10 on behalf of Spareman D. T. Knox.

CONCLUSION

Carrier has shown:

1. There has been no agreement rule violation;
2. Awards of Third Division support the Carrier;
3. Claimant Knox was not available for service on March 10, 1959.

The Carrier has also shown the Claimant did not work in excess of five days or 40 straight time hours in any work week; neither did the claimant work on the sixth and seventh day of any work week.

It is the position of the Carrier that there is no agreement requirement or authority for the payment of this claim, and Carrier respectfully requests this claim be declined in its entirety.

OPINION OF BOARD: Claim number one in this dispute involves rest day compensation. This point has been ruled on numerous times by this Board. The overwhelming weight of authority favors such a claim. We are of the opinion that the facts in this claim come within the confines of the many precedent cases on the subject and therefore claim number one should be sustained.

Claim number two does not appear to be proper. It is our opinion that the spare man is not entitled to work unless there is a vacancy. We find no such vacancy in this case. We are therefore persuaded that claim number two is without merit and should 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 violated.

AWARD

Claim number one is sustained.

Claim number two is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October, 1964.