

Award No. 13009
Docket No. TE-12151

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

HUDSON AND MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson and Manhattan Railroad that:

1. Carrier violated the agreement between the parties when it improperly advertised Towerman J. Neville's regular position and assigned it to a junior employee.

2. Carrier shall be required to compensate J. Neville in the amount of day's pay at the rate of his regular position on each work day suspended and the difference between straight time and time and one-half at the rate of the position worked on the assigned rest days of his regular position August 26, 1958, through September 20, 1958.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and are by this reference made a part hereof.

Towerman J. Neville held a regular assignment to relief position No. 23 under the Telegraphers' agreement with a work week beginning on Saturday and assigned rest days of Thursday and Friday. He had also acquired the status of acting train dispatcher, under the provisions of Article XXI of the Telegraphers' agreement. He did not hold a regular assignment as a train dispatcher. He was required, commencing June 8, 1958, to perform work as a train dispatcher, relieving regularly assigned train dispatchers primarily because of train dispatchers' vacations. The Carrier then bulletined his regular assignment (relief position No. 23) and assigned it to a junior employee.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as ORT Exhibits Nos. 1 through 16.

one-half whatever his compensation might be because he worked the other days of the week as a telegrapher, covered by the Rest Day Agreement. In fact, we believe this case arose out of the close kinship between the dispatchers' and telegraphers' work. However close that kinship may be, we cannot let it influence our thinking in this case."

In view of the above, it is submitted that there is no basis for the claim. In any event, the ORT does not represent Acting Train Dispatchers, and does not have the right to prosecute any claim or grievance concerning an employe acting in that capacity, and subject to the Carrier's agreement with the ATDA, the organization which has the sole collective bargaining rights for all Train Dispatchers and Acting Train Dispatchers.

The claimant herein not only demands that he be paid at the time and one-half rate while working as a Dispatcher on what would have been his rest days had he continued to serve as a Towerman, but also demands that he be paid straight time at the Towerman's rate for the two rest days which he was given on his tour as a Dispatcher, on the ground that had he been working as a Towerman these would have been work days. This claim is patently unreasonable. The Carrier's agreement with the ATDA requires that a Dispatcher be given two rest days in a seven-day period, and there is no reason why the Carrier should be penalized for adhering to the terms of the governing agreement.

CONCLUSION

Carrier submits that the employe's claim is without merit. Also, it should be dismissed on the ground that no provision in the ORT or the ATDA agreements gives the ORT the right to bargain or process claims under the ATDA agreement.

OPINION OF BOARD: Claimant held a regular assignment as a towerman. He also acquired the status of acting train dispatcher. On June 8, 1958, he elected to serve as a train dispatcher in relieving regular train dispatchers while they were vacationing. He served as a train dispatcher until September 20, 1958. Meanwhile, Carrier bulletined Claimant's regular position as a towerman as a temporary vacancy. Upon completion of Claimant's duties as a dispatcher, he resumed his duties as a towerman in his old position.

Claimant files, in effect, three different claims, as follows:

1. Claim that the Carrier violated the Agreement when it bulletined his old position as towerman using his service as a dispatcher.
2. Claim for compensation at time and one-half for days which he worked as a dispatcher which days were rest days on his towerman's position.
3. Claim for compensation for days which were rest days on his dispatcher's position which were work days on his old towerman's position.

These claims will be dealt with in the order above enumerated for purposes of clarity.

Claim number one (1) will be denied. There is no evidence in the record to indicate that the Carrier violated the Agreement by bulletining the towerman's position during Claimant's absence. Neither does it appear that Claimant was in any way damaged by the bulletining, since he immediately returned to his old position upon completion of his tour of duty as a dispatcher.

Carrier contends that Article XVIII (b), referred to as the "temporary vacancy rule" authorized them to bulletin as they did in this case. That rule reads as follows:

"A temporary vacancy when known to be for thirty days or more will be advertised and filled in accordance with the provisions of paragraph (a) above. On return to service, the employe whose absence caused the temporary vacancy, and other employes affected thereby, may exercise seniority in accordance with the provisions of paragraph (b) of Article XX."

On the other hand, Claimant contends that the above rule should not be applicable because there is no evidence that the towerman's vacancy was known to be for thirty days or more. However, the record clearly shows that the dispatcher's position was to relieve regular dispatchers who were vacationing during the summer and it clearly appears that the tour was, and did, extend much longer than thirty (30) days.

We, therefore, hold that the Carrier did not violate the Agreement by bulletining the towerman's position after Claimant's election to temporarily vacate same.

Claim number (2) must also be denied. The claim for compensation at time and one-half for work performed as a dispatcher on the rest days of the old position is without merit. This Board dealt with a similar claim in Award 3674, denying the claim. That award appears to be sound in its reasoning and is determinative of this issue, and we adhere to same in denying this claim.

Claim number three (3) presents a more difficult question. Claimant contends that even though he was filling a position as a dispatcher that he also has the right to work as a towerman on his dispatcher rest days and claims compensation therefor. In support of this claim he cites Article XV of the Telegraphers' Agreement, which reads as follows:

"A regularly assigned employe shall receive not less than eight hours' pay within each twenty-four hour period, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than eight hours."

Carrier counters this argument by pointing out that when an employe moves from one position to another, under a different agreement, he assumes all the conditions of the job to which he moves. It contends that when Claimant elected to become a dispatcher, he is governed by all the rules and regulations of the Dispatchers' Agreement and cannot, during this time assert any rights under the Telegraphers' Agreement against the Carrier. Thus, he is governed by the Dispatchers' Agreement rules regarding assigned working days and regarding assigned rest hours. Carrier cites Award 6561 as follows:

"This Division has repeatedly ruled that the specified rest days are an integral part of the work week of each bulletined assignment, that they are not attached to the individual employe so that he may carry them with him as he moves from one assignment to another." Carrier also cites Second Division Award 1563 wherein it was stated:

"All rules of a collective bargaining agreement should be so construed, if the language will permit, as to bring about a practical application thereof on the property. To hold that the working conditions attaching to the position claimant regularly occupied at the Brooklyn shops attached to and followed him while he was being used to temporarily fill the other position would bring about abnormal working conditions. It would require carrier to pay claimant on an overtime basis for a regular shift on the position he was temporarily occupying if such was worked on a rest day of his regular assignment. On the other hand, if a rest day of the position being temporarily filled fell on a work day of the regular assignment, then carrier would be required to work claimant on his regular assignment on that day. In other words, if the working conditions of his regular assignment followed claimant, then he should have worked his regular assignment on November 23, 24 and on November 30 and December 1, 1950. This, we think, was neither the intent nor purpose of the rules as written."

We agree with the reasoning expressed in these awards. We, therefore, hold that Claimant, having elected to fill a dispatcher's position, thereby came under the Dispatchers' Agreement, and could not, at the same time, demand rights against this Carrier under the Telegraphers' Agreement. Once his old position as towerman was bulletined, he ceased to be entitled to the benefits of a regularly assigned telegrapher. Any reversionary rights that he has to his old position and under the Telegraphers' Agreement are suspended until he terminates his tour of duty as a train dispatcher. The extent and nature of those reversionary rights under the Telegraphers' Agreement after termination of his tour as a dispatcher is not necessary to a decision herein and are not decided.

Claimant contends that Award 12725 supports his right to work as a telegrapher on his dispatcher rest days. Therein the employes contended that Carrier violated the Agreement by permitting an acting dispatcher to work as a telegrapher on his dispatcher rest days. Although the Board held that the Carrier did not violate the Agreement by permitting such work, the Board did not hold that the acting dispatcher was entitled to demand the work under the terms of the Telegraphers' Agreement. In fact, the Board cited the following language from Award 3674, stating that when the regular assigned telegrapher:

"... was working as a dispatcher he was working under the Dispatchers' Agreement, not the Telegraphers', as supplemented by the Rest Day Agreement."

For these reasons, claim three (3) must also 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 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 Agreement has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.