Award No. 13246
Docket No. TE-12428

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

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 Company, that:

> Extra Operator E. K. Shrader is entitled to eight (8) hours' pay at the pro rata rate, for being available and not called or used as Leverman at Harris Tower, for which he was qualified, during the tour from 2 P. M. to 10 P. M., on September 26, 1959, due to the fact that he had worked only two (2) days of his work week up to that time, with a total of three (3) days for the work week, while Extra Operator J. Dipaola was used at Harris as leverman on date in question, three (3) days in succession on his third, fourth and fifth days of his work week. Regulation 5-E-1 governing.

EMPLOYES' STATEMENT OF FACTS: Claimant was a qualified block operator and leverman on the Harrisburg District of Carrier's Philadelphia Region. Harris Tower is located at Harrisburg, Pa. On September 26, 1959 there occurred a vacancy in the second shift (2:00 P. M. - 10:00 P. M.) leverman's position at this Tower office. The agreement between the parties specifies under regulation 5-E-1 that:

> "So far as practicable, extra work on Group 2 assignments shall be divided equally among qualified extra employes.
>
> An extra employe cannot claim extra work in excess of forty (40) hours in his work week if another extra or unassigned employe who has had less than forty (40) hours' work in his work week is available."

The vacancy at Harris Tower was a "Group 2" assignment within the purview of the above rule. Claimant was a Group 2 class extra employe entitled and qualified to work the position. Instead of calling claimant, Carrier dispatched extra operator J. DiPaolo whose share of extra work had already exceeded that of claimant Shrader. Mr. Shrader submitted a time claim for the day's work so denied him.

Other factual evidence may be found in the following correspondence exchanged between the parties on the property:

Another contention of the Employes was to the effect that an exact equalization of extra work should be made each week on a weekly basis.

As shown hereinbefore, the rule does not, nor was it ever intended to provide for an exact equalization of extra work. It provides that equalization will be made only insofar as practicable. Furthermore, there is no indication that any equalization should be made each week. This, in most cases, would be impossible for many reasons, but particularly on the qualification feature explained hereinbefore.

The Carrier submits that in view of the foregoing, there is no merit to the Employes' claim that the Carrier's failure to use Claimant on the date involved violated Regulation 5-E-1 or any other provision of the applicable Agreement, but rather was in accordance therewith. Therefore, no valid basis exists for allowing the monetary payment requested in the claim, and it should be denied.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To Said Agreements And To Decide The Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreements and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretations or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties thereto. To grant the claim of the Employes in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement and the Claimant is not entitled to the compensation requested in the claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves Rule 5-E-1 of the Agreement, which reads as follows:

> "So far as practicable, extra work on Group 2 assignments shall be divided equally among qualified extra employes."

The claim is processed on the basis of the workweek commencing September 21, 1959. Claimant charges that he received only three days work

that week, while a Mr. J. DiPaolo received five days work. It should be pointed out that Claimant was not qualified to work the position on one of the days Dipaola worked. Even discounting that day, however, Dipaola would have worked one more day than Claimant, during the week in question.

We are satisfied that the Carrier should try to assign the work as equally as possible. We must also point out that if the uneven days worked, were to fall against the same employe each week, he would ultimately end up with far less days worked than his contemporaries. This would be most undesirable and would serve to defeat the intent of the rule cited.

We are of the opinion that the language in this rule requires the Carrier to make an honest effort to impartially distribute this work. We do not think however, that it requires each workweek to be divided exactly equally among the employes. The words, "So far as practicable" leave some degree of discretion within the Carrier. It is not required that the workweek be reduced to a mathematical certainty for each and every employe, regardless of other circumstances.

We find no reason presented in the present case to indicate that Carrier acted improperly during the workweek involved.

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 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 29th day of January 1965.