

Award No. 13843
Docket No. TE-13181

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Harrisburg District, Philadelphia Region, that Leverman G. D. Miller is entitled to eight (8) hours' pay at the punitive rate of Day Tower, Enola, for November 24, 1960, the position to which he exercised his seniority according to Regulations 2-N-1 and 2-O-1(a). The claimant was suspended from working a work day of the assignment to which he exercised his seniority by being paid an eight (8) hour day at the pro rata rate and told to stay home on Thanksgiving, November 24, 1960, so as to avoid payment for holiday pay. Regulations 4-G-1, 4-T-1, 5-G-1(b), 5-G-1(c) and 4-H-1(b) of present Agreement governing.

EMPLOYEES' STATEMENT OF FACTS: Up to November 23, 1960, Claimant G. D. Miller was a regularly assigned Leverman at Harris Tower, Harrisburg, Pennsylvania, with assigned hours 9:00 P. M. to 5:00 A. M., five days per week, Thursday through Monday, rest days Tuesday and Wednesday. On November 23, 1960, he was notified that he was being displaced from this position effective November 24, 1960. Claimant then, in turn, immediately declared his seniority displacement rights to the 10:00 P. M. to 6:00 A. M. Leverman's position at Day Tower, Enola, Pennsylvania, where he proposed to report November 24 in order to avoid loss of time. Regulation 2-N-1(a) of the Agreement between the parties provides, in part, that:

"When an employe, subject to the provisions of Regulation 1-A-1, becomes entitled to displace another employe by the exercise of his seniority under any provisions of this Agreement, he must indicate his intention to do so, in writing, within ten (10) days."

REGULATION 2-O-1(a).

"An employe may displace a junior employe by the exercise of his seniority in the following cases:

* * * * *

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 Employees 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 Agreements, 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 Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: On Wednesday, November 23, 1960, Claimant, while observing his second rest day was notified that he would be displaced from his third trick Leverman assignment at Harris Tower (Harrisburg) on Thursday, November 24, 1960. Forthwith, Claimant notified Carrier of his intention to displace a junior employe on third trick Leverman assignment at Day Tower (Enola). At approximately 3:00 P. M., on November 23, 1960, the Wire Chief advised Claimant that: (1) Claimant was not qualified at Day Tower and that it would be necessary for him to post prior to taking over the position; and, (2) he should not report for posting on the following day, Thanksgiving, a designated holiday in Regulation 4-H-1(a) of the Agreement. Claimant did not work on Thanksgiving—he was paid for the day at the pro rata rate.

From the time of his displacement at Harris Tower unless and until he qualified after four days posting at Day Tower, Claimant had only a contingent future right to ownership of the position at Day Tower. Ownership and responsibility for performing the duties of the position, during the posting period, vested in the occupant as of November 24, unless during that time he was displaced by a senior qualified employe.

The Organization argues that Claimant should have been permitted to begin his posting period on Thanksgiving and be paid at the holiday rate of pay for that day. We do not agree.

Regulation 4-H-1. (a), insofar as here material reads:

"4-H-1. (a) If conditions of business permit, employes shall be excused on New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving and Christmas." . . . (Emphasis ours.)

The objective of the Regulation is to assure employes freedom from work during the listed holidays without loss of pay if "conditions of business per-

mit." The facts in this case persuade that conditions of business on the Thanksgiving Day involved did permit Claimant to enjoy the holiday within the contemplation of the Regulation and Carrier, therefore, was contractually obligated to afford him the enjoyment. We will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1965.