

Award No. 13860
Docket No. TE-13046

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of Railroad Telegraphers on the Central of Georgia Railway, that:

CLAIM NO. 1

1. Carrier violated Agreement when it failed and refused to pay Extra Operator G. M. Cone the correct amount for service performed at Byron, Georgia, on October 13, 1960.

2. The Carrier shall compensate G. M. Cone for the difference between eight (8) hours at the straight time rate and eight (8) hours at the time and one-half rate for service performed at Byron, Georgia, on October 13, 1960.

CLAIM NO. 2

1. Carrier violated Agreement on October 16, 1960, when it suspended Extra Operator G. M. Cone from work, permitting regular employe to perform this service on his assigned rest day.

2. The Carrier shall compensate G. M. Cone for eight (8) hours at time and one-half at the Terra Cotta rate for work not performed by him by such suspension.

EMPLOYEES' STATEMENT OF FACTS: Claims No. 1 and No. 2 involve the same Claimant. Extra Operator G. M. Cone was instructed to work the regular relief position at Terra Cotta beginning August 15, 1960, until further advised. The relief position was assigned to work as follows:

"1st shift 6:30 A. M. to 2:30 P. M., Friday and Saturday.

2nd shift 2:30 P. M. to 10:30 P. M., Sunday and Monday.

3rd shift 10:30 P. M. to 6:30 A. M., Tuesday.

Assigned rest days Wednesday and Thursday."

Also see Third Division Awards:

Award 7964 (Referee Lynch)
Award 7908 (Referee Smith)
Award 7861 (Referee Shugrue)
Award 7584 (Referee Smith)
Award 7416 (No referee)
Award 7365 (Referee Rader)
Award 7362 (Referee Larkin)
Award 7353 (Referee Rader)
Award 7180 (Referee Cluster)
Award 7179 (Referee Cluster)
Award 6964 (Referee Rader)
Award 6748 (Referee Parker)
Award 6734 (Referee Parker)
Award 6725 (Referee Donaldson)
Award 6673 (Referee Robertson)

and many others. The Employees to date have not sustained the burden of proof.

The only way the claim here involved can be sustained would be for the Board to disregard the contract between the parties and make an award imposing upon the Carrier conditions of employment and obligations with respect thereto not agreed upon between the parties by following the processes of the Railway Labor Act. The Board does not have authority to grant rules or amend present rules, and there are so many awards on this point as to obviate a citation of them.

CONCLUSION

It has been conclusively shown that

- (1) Neither the effective rules agreement, interpretations or past practice substantiate the Employees' claim;
- (2) The burden of proof rests squarely upon the shoulders of the Employees, and to date they have not proven their allegations;
- (3) The Board is without authority to grant new rules or amend present rules, as is demanded in the "Employees' Statement of Claim."

Under all the facts and circumstances related, it is Carrier's position that the Board cannot do other than render a denial award.

OPINION OF BOARD: On or about August 15, 1960, a temporary vacancy occurred in the relief assignment at Terra Cotta. The vacancy was created when the regular incumbent was temporarily assigned at Macon Junction. The vacancy at that point was brought about when the incumbent of that position was used temporarily as a train dispatcher.

The relief assignment at Terra Cotta was bulletined to work as follows:

Friday	7:00 A. M. to 3:00 P. M.	Terra Cotta
Saturday	7:00 A. M. to 3:00 P. M.	Terra Cotta
Sunday	3:00 P. M. to 11:00 P. M.	Terra Cotta
Monday	3:00 P. M. to 11:00 P. M.	Terra Cotta
Tuesday	11:00 P. M. to 7:00 A. M.	Terra Cotta
Wednesday	REST DAY	
Thursday	REST DAY	

Claimant, an extra Telegrapher, was assigned to the temporary vacancy on the relief position. The Board finds that the Claimant, in the workweek beginning October 7, 1960, performed service on October 13th (Thursday), an assigned rest day. The Board further finds that Claimant, although ready and available, was not permitted to work on October 16, 1960 (Sunday), an assigned work day of the relief assignment.

Rule 6(h) of the Agreement provides:

"To the extent extra men may be utilized under this agreement, their days off need not be consecutive; however, if they take the assignment of a regular employe, they will have as their days off the regular days off of that assignment."

Beginning with Award 6970, it has been the consensus of Board interpretation of this rule, that an extra employe takes the workweek and the rest days of the position he is temporarily filling. The Agreement provides that regular relief assignments are bulletined and filled as any other regular position. Rule 6(m) provides for time and one-half rate, under these circumstances, for service on rest days. Claim No. 1 will be sustained.

Claimant was not displaced from the temporary vacancy. He continued on the assignment after October 13, 1960. There is no Agreement basis for suspending him from work on October 16, 1960, which was a regular assigned work day of the relief position. The fact that he was used on October 13th, a rest day, did not, under the circumstances, have any bearing on his right to work the temporary vacancy to which he has been assigned. It was, therefore, error to use the regular incumbent of the second shift position, instead of Claimant, on this date. However, had Claimant been used, he would have been entitled only to pro-rata rate. Claim No. 2 will be sustained at pro-rata rate.

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 No. 1 sustained.

Claim No. 2 sustained for 8 hours at pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1965.