

Award No. 13909

Docket No. TE-13844

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

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

1. Carrier violated the Agreement between the parties when it failed to notify P. J. Carroll that he was senior applicant for the position of second shift leverman at Tower A, Boston, Massachusetts, within the time limit provided by the Agreement. Carrier further violated the Agreement between the parties when it failed to place P. J. Carroll on (assign) said position (advertised as Vacancy No. 19) within the time limit provided by said Agreement.

2. Carrier shall compensate P. J. Carroll in the amount of four (4) days' pay of eight (8) hours each at the straight time rate of the position of second shift leverman at Tower A (\$2.695) for August 21, 22, 23 and 24, 1961.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1950, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

Claimant P. J. Carroll holds seniority rights on the Terminal District of the Boston Division of the Carrier's lines. Claimant's seniority date is May 18, 1950, and during most of his service with the Carrier he was worked as a spare leverman. At time of claim, Carroll was working on the Relief Tower Director and Leverman position at Tower A, Boston, Massachusetts. This position works as follows (all positions located at Tower A):

Friday,	Leverman,	6:00 A. M. to 2:00 P. M.
Saturday,	Leverman,	2:00 P. M. to 10:00 P. M.
Sunday,	Leverman,	2:00 P. M. to 10:00 P. M.
Monday,	Director	10:00 P. M. to 6:00 A. M.
Tuesday,	Director	10:00 P. M. to 6:00 A. M.

Rest Days, Wednesday and Thursday.

assignment, and he actually earned more than he would have made if he had been placed in the position of his father, as requested. The claim is, therefore, denied in its entirety."

In this case, the identical principle is involved. The earnings in the work covered were in excess of those of the job claimed by \$6.00 a week, which amount claimant earned on two of the four days of claim.

Such a rule is particularly appropriate when, as here, no timely request or protest is made. Carrier proceeded in good faith, only to be met two weeks after the event with a penalty claim, not provided for by rule or agreement, and without basis in equity.

The basic issue to be decided is whether the claimant suffered any monetary loss. The answer being in the negative, the entire claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the same parties and a similar claim as in the companion case, Award No. 13908.

Involved herein are only 4 days, August 21, 22, 23 and 24, 1961, during which Claimant was improperly kept off a position to which he was entitled. The Organization recognized the principle of offsetting the loss of earnings, \$86.24 by the amount earned in the period in question, \$49.12, leaving a net difference of \$37.12, which is hereby awarded.

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 violated the Agreement.

AWARD

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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