

Award No. 13912
Docket No. TE-12959

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 use Train Director C. L. Brewer to work the rest days of the position of Second Trick Train Director, Mechanicville, New York, on Tuesday, May 31 and Wednesday, June 1, 1960.
2. Because of this violation depriving him of work to which entitled, Carrier shall compensate C. L. Brewer in the amount of eight (8) hours' pay at the time and one-half rate for each day May 31 and June 1, 1960.

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

All positions and employees involved in this claim are covered by the Agreement and are located on the Fitchburg Division of the railroad. The employees hold seniority rights to all work and/or positions on the Division.

C. L. Brewer, on dates of violation, was regularly assigned to the position of Second Train Director at Ayer Tower, Massachusetts (occupant of the position on temporary assignment by bulletin), assigned hours 2:00 P.M. to 10:00 P.M., daily, except Tuesday and Wednesday, rest days. The rest day work is part of a regular relief assignment and these two days are worked by a regular relief employee.

On Tuesday, May 31 and Wednesday, June 1, 1960, a two-day vacancy existed on the position of Second Train Director, Mechanicville Tower, New York, due to the regular relief employee not being available to work the rest days of his assignment. The regular incumbent of the position was likewise not available for service on these rest days.

It is submitted no award may properly be made in his favor. He is no longer an "employee" of the Boston and Maine under the provisions of the Railway Labor Act, or under the provisions of the schedule.

III.

Even were there merit to the claim and even were Brewer a proper claimant, the penalty demanded is beyond that authorized by this Board in like cases. It has been repeatedly ruled by this division, and by other divisions, that the straight-time rate is the proper penalty for work to which entitled but not actually performed.

There is no merit to the claim, and a denial award is respectfully requested.

OPINION OF BOARD: On Tuesday, May 31, and Wednesday, June 1, 1960, a two-day vacancy existed on the position of Second Train Director, Mechanicville Tower, New York, due to the regular relief employee not being available to work the rest days of his assignment. The regular incumbent was also not available for service on those rest days. There were no employees available from the extra list to work this assignment.

Carrier used J. F. Girouard to work these days. Mr. Girouard was regularly assigned to a relief position at Johnsonville and North Adams Towers. Girouard was removed from his regular position to work this assignment and the regular incumbent was used to fill Girouard's vacated assignment.

Although Girouard was the senior, Claimant argued that Girouard was not available, in that he had a regular assignment from which he was suspended to take this assignment and that Claimant should have been used.

Regardless of any irregularity in the use of Girouard, and we do not find there was any, the record is lacking in any showing of a contractual provision upon which a demand right would accrue to Claimant to be used on this assignment. His claim must, therefore, necessarily fail.

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 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 21st day of October 1965.