

Award No. 14062
Docket No. TE-13899

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

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

BANGOR AND AROOSTOOK RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bangor & Aroostook Railroad, that:

1. Carrier violated the parties' Agreement by assigning an employe not covered thereby, to perform work on positions under the scope thereof, on dates between February 5 and March 29, 1962.

2. Carrier shall be required to compensate the employees whose names are shown below, and who were ready, willing, and available to perform the work assigned to non-scheduled employe, eight hours at time and one-half rate for each date shown opposite his name:

P. R. Robertson	February 5, 6, 7, 8, 9, March 12, 13, 14, 15 and 16, 1962.
M. P. Gillis	February 26, 27, 18 March 1 and 2, 1962
E. J. Burns	March 5, 6, 7, 8 and 9, 1962.
Y. G. Levesque	March 19, 20, 21, 22 and 23, 1962.
L. J. Boucher	March 26, 27, 28 and 29, 1962.

EMPLOYEES' STATEMENT OF FACTS: Article XIV of the parties' Agreement represents the incorporation of the Provisions of the so-called National 40 Hour Work Week Agreement, signed in Chicago, Illinois on March 19, 1949.

Section (g) of Article XIV reads as follows:

"(g) Nonconsecutive Rest Days.

The typical work week is to be one with two consecutive days off, and it is the carrier's obligation to grant this. Therefore, when

men as yard clerks, and, in this instance, a spare station clerk in a station assignment which no one in the telegraphers' craft wanted.

These several claims, as submitted, are for time and one-half rate. Your attention is called to the fact, without prejudice to the position already taken by this Company, that there is no merit in these claims. This Division has previously ruled in numerous awards that the punitive rate will not be allowed unless the work claimed is in fact performed, and payment at pro-rata rate is proper in instances where the Board has found that a claimant was improperly held off an assignment.

It is apparent that the Company made every effort to provide continuous service to its customers, and agreed-upon relief to its employees. We feel, therefore, that there was ample justification for bringing this additional employee into station service, especially since no employee represented by the Organization was deprived of employment by this move.

In view of the foregoing, and for reasons stated, these claims should be denied.

OPINION OF BOARD: This dispute arose when the Carrier used a clerk, who held no seniority under the Telegraphers' Agreement, at the time, to work in place of the agent at New Limerick, absent account of illness.

The Carrier's action was taken when the one available spare employee who could have been required to work at New Limerick declined the assignment. Two other spare employees who held no seniority in the district involved also declined to work there.

It appears that the Carrier does not seriously disagree with the Employees' contention that it was improper to use an employee of another craft in relief service. The employee so used was later accorded a seniority date under the Telegraphers' Agreement, without objection.

Under the circumstances of this case, we think Item 1 of the claim should be sustained.

Item 2, however, cannot be sustained. The claims in Item 2 do not involve employees who allegedly should have been used at New Limerick. Instead, they are for regular assigned employees on other positions, on dates they were relieved for their accumulated rest days. The Organization's argument is based on the theory that instead of relieving the Claimants for their rest periods, the Carrier should have required them to work. Consequently, the spare man would then have been available for the work assignment at New Limerick.

The Employees, however, have neglected to support this theory with either facts or citation of pertinent authority. They have failed to show that the Carrier violated any rule when it provided rest day relief for the Claimants. In essence, the Employees have not established any basis for an award in favor of the Claimants. It is also noteworthy that certain of the claims were not properly appealed on the property and thus could not be considered in any event.

Under the peculiar circumstances of this case, and without establishing a precedent for any other case, we will sustain Item 1 and deny Item 2 of 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 Agreement was violated to the extent indicated in the Opinion.

AWARD

Item 1 of the claim sustained. Item 2 denied, both in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1965.