

Award No. 14096

Docket No. TE-13806

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central Railroad Company of New Jersey, that Carrier violated the parties' Agreement on Sunday, January 28, 1962, because:

1. (a) It failed and refused to pay Henry King at the rate of time and one-half for the eight hours service he performed at Westfield, New Jersey, on said date.

(b) Carrier shall compensate Henry King for the difference between straight time pay allowed and the time and one-half rate due for the service performed. (Carrier's file TE No. 45.)
2. (a) It failed to assign Ticket Agent E. Mundy to work at Westfield, New Jersey on said date.

(b) Carrier shall compensate E. Mundy eight hours at time and one-half rate. (Carrier's file TE No. 44.)

EMPLOYEES' STATEMENT OF FACTS: First, in respect to Part 1 of the Statement of Claim, Henry King was assigned to a first trick ticket agent vacancy at Raritan, New Jersey, commencing Thursday, January 25, 1962 and he remained thereon through Friday, February 16, 1962. Said position is assigned from 6:30 A.M. to 3:15 P.M., Monday through Friday; Saturday and Sunday rest days not covered.

After working this assignment on Thursday and Friday (25th and 26th), Mr. King was off on Saturday (27th) the rest day of the position. On Saturday evening (27th), Mr. King was notified to work, and did work, second trick at Westfield, New Jersey on Sunday (28th). He resumed service on his Raritan assignment on Monday (29th) and continued thereon for the duration of the vacancy which ended on Friday, February 16.

This rule, firmly established by decisions of the Board, provides that work on rest days should be assigned in the first instance to a regularly assigned relief man if there be such; secondly, to an extra or unassigned employe not having worked forty (40) hours of his work week; and, finally, if such employes are not available to the regular occupant of the position on an overtime basis — see Awards 5271, 5333, 5465, 5475, 5558, 5708, 5804, among others. Where such work is unassigned work it may be performed in the first instance by extra or unassigned employes; in all other cases by the regular employe. In the instant case, the Relief Cycle Agent reported off duty at Westfield, N.J. and the resultant vacancy was covered by extra Agent King. Therefore, Claimant King not only had a right to perform the work but the Carrier had a corresponding obligation to use him. It necessarily follows that inasmuch as King had not qualified for the rest days of the assignment at Raritan by completing the work week of that assignment, nor was he performing service on the sixth or seventh day of any work week, he was only entitled to the pro rata rate of pay.

Carrier asserts that it has established that the claim is without merit or basis, and should be denied in its entirety.

CLAIM NO. 1

OPINION OF BOARD: Claimant, Henry King, was an extra agent used to fill day to day and temporary vacancies. On Thursday, January 25, 1962, he was assigned to cover a first trick ticket agency vacancy at Raritan, New Jersey. That was a five day position with assigned hours from 6:30 A.M. to 3:15 P.M., Monday through Friday and Saturday and Sunday as rest days. He worked Thursday and Friday, January 25, and 26, 1962 and he was off on Saturday, January 27, one of the rest days of the position. At Carrier's direction, he worked Sunday, January 28, 1962, on the second trick at Westfield, New Jersey, for which he was paid at the straight time rate. He returned to the first trick ticket agency position at Raritan on Monday, January 29, and worked continuously in that position through Friday, February 16, 1962, when the regularly assigned employe returned.

Claimant, King, contends that he was assigned to the vacancy in accordance with the rules of the applicable Agreement, that Sunday, January 28 was his rest day and that he should have been paid at the rate of time and one-half instead of straight time for the work performed on that day. Specifically, Employees argue that the Carrier violated Rules 15(d) and 21(h) which respectively read as follows:

"(d) An Extra Employe assigned to a vacancy will complete the assignment, except he may be displaced by a regular towerman or regular extra agent at any time, or by a senior extra Employe after the junior extra has held the assignment of three days or more, subject to the provisions of paragraph (h) of this Article."
(Emphasis ours.)

* * * * *

"(h) Rest Days of Extra Employes 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 of that assignment." (Emphasis ours.)

It is the position of the Carrier that Claimant King was never permanently assigned to the vacancy on a hold down basis under Rule 15(d) and if it is not a hold down assignment under that Rule, the provisions of Rule 21(h) are not applicable. Carrier also contends that it has been the practice on the property to assign extra employes on a day to day and not on a hold down basis.

There is no evidence in the record showing what Carrier said to Claimant King when he was assigned to fill the vacancy, nor is there any probative evidence of practice on the property.

But, had there been relevant and acceptable evidence of past practice, the contract terms, which are clear and meaningful, take precedence and must be applied. Under Rule 15(b) extra employes, when available and qualified, are assigned in their seniority order. Carrier does not deny that this Claimant was assigned to the vacancy pursuant to that rule. Having been assigned under Rule 15(b), Rule 15(d) becomes applicable. The latter clearly and unmistakably says that when an extra employe is assigned to a vacancy he will complete the assignment. Carrier may not thereafter use him on a day to day basis at will. Carrier must assign such senior extra employe for the duration of the vacancy, subject only to the exceptions in Rule 15(d) and in Rule 15(b). None of the exceptions exist in this case.

Claimant, King, was permanently assigned for the duration of the vacancy on January 25, 1962. Having been so assigned, Rule 21(h) applies. His rest days became Saturday and Sunday, the regular days off of the absent regular employe assigned to that position. Sunday, January 28, 1962, was his rest day. He was entitled to be paid at the time and one-half rate for work on that day instead of straight time.

CLAIM NO. 2

Claimant, Elmer Mundy, was the regular assigned Ticket Agent at Westfield, New Jersey. His was a five day position, Monday through Friday, on the second trick. His rest days were Saturday and Sunday. January 28, 1962, was his rest day.

Having established that Claimant, King, was called to work the position at Westfield on Sunday, January 28, 1962, on his rest day, it becomes necessary to determine who, if anyone other than King, should have been called to work that assignment.

The regular Relief Agent assigned to that position was absent because of a death in his family. Since King was assigned to fill a regular vacancy and there were no extra or unassigned employes available, Claimant, Mundy, should have been called. There is no evidence that he was not available.

It is agreed that Rule 21(n) does not apply because this was a regularly assigned relief position. It is also agreed that there is no specific rule in the Agreement dealing with this subject.

The principle of rest day assignments is thoroughly examined in Award 10957, where we said:

"It is a well established principle of this Board that rest day assignments are made in the following manner:

1. To a regular assigned relief man.
2. If the regular assigned relief man is not available, to a qualified extra man.
3. If a qualified extra man is not available, to the regular occupant of the position on an overtime basis."

Numerous Awards are cited in support of this holding.

In the absence of any specific contract provisions the above principle, based on the Forty Hour Week provisions, is applicable.

Claimant, Mundy, should have been called to fill the vacancy on Sunday, January 29, 1962.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

Claims 1 and 2 are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.