

Award No. 14260
Docket No. TE-11511

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. Carrier violated the agreement when it failed to assign properly the vacation relief work at the Wilson freight office from May 12 through May 30, 1958, during which time regular incumbent of the operator-clerk position was on vacation.
2. Carrier shall compensate the senior idle employee, extra in preference, a pro rata day's pay for each day the position was improperly assigned to and worked by an employee not under the coverage of the Telegraphers' Agreement. According to our records the senior idle regular and the senior idle extra employees were as follows:

Work Day	Date	Senior Idle Regular	Senior Idle Extra	Other Extras
MONDAY	May 12, 1958	J. V. Warren	Henry Proctor	4
Tuesday	May 13, 1958	J. J. Meade	Henry Proctor	5
Wednesday	May 14, 1958	T. V. Harris	Henry Proctor	5
Thursday	May 15, 1958	J. D. Carroll	Nellie T. Hinson	8
Friday	May 16, 1958	J. D. Carroll	Nellie T. Hinson	8
MONDAY	May 19, 1958	J. V. Warren	Henry Proctor	5
Tuesday	May 20, 1958	J. J. Meade	Henry Proctor	5
Wednesday	May 21, 1958	T. V. Harris	Henry Proctor	6
Thursday	May 22, 1958	J. D. Carroll	Henry Proctor	6
Friday	May 23, 1958	J. D. Carroll	Henry Proctor	5
MONDAY	May 26, 1958	J. V. Warren	Priscilla R. Cole	7
Tuesday	May 27, 1958	J. J. Meade	Priscilla R. Cole	10
Wednesday	May 28, 1958	T. V. Harris	Priscilla R. Cole	9
Thursday	May 29, 1958	J. D. Carroll	Priscilla R. Cole	10
Friday	May 30, 1958	J. D. Carroll	Priscilla R. Cole	9

ing connected with this assignment; he consumes the greater portion of his tour of duty in handling the billing of shipments, verification of freight rates and transit rates, and such work (except under the ebb and flow doctrine) is generally regarded as clerical work, such work being assigned in instances of this kind to a telegrapher because of the necessity for a certain amount of telegraph service at the freight station which (Award 615) cannot be absorbed by a clerical employe.

Wilson, N. C., is one of the largest tobacco markets in the world, during which the volume of traffic handled through this freight agency increases tremendously. When it was noted that McLean was scheduled to take his vacation beginning September 1, 1958, which would be right in the heaviest part of the tobacco season, he was notified that his vacation was advanced to May 12, 1958. At the time it was necessary to relieve McLean for his vacation we had only two extra operators available, one Priscilla Cole and one Henry Proctor. Another extra operator, Mrs. Hinson, was then working and became available May 15th. However, through personal preference, Mrs. Cole does not desire nor will she accept work as far away from her home as Wilson; in fact, she will work only at locations where she can commute back and forth between home and work each day, and the carrier has endeavored to accommodate her to that extent. Proctor was working another job and would not accept recall to telegraph service, and was dropped from the roster. Mrs. Hinson (who became available May 15th) was neither qualified to work the Wilson vacancy, nor was she, upon being asked, interested in taking the relief vacation work at Wilson.

Therefore, not having an extra employe coming within the telegraphers' class to perform this vacation relief work, a clerical employe, Mrs. Hazel Jenks, was sent to Wilson to relieve Mr. McLean for his vacation. Mrs. Jenks could not, of course, perform the telegraphing service required, but having worked at the Wilson agency from 1948 through 1954, she was well qualified to perform the residual clerical work that flowed to the regular operator-clerk's job. Insofar as telegraphing is concerned, that there is very little of it performed at Wilson freight station is reflected by the record which shows that during the period May 12th through May 31st (20 days) there was a total of 44 messages sent and 23 received for this freight station, an average of about 3½ messages per day.

At Wilson, N. C., there is located a tower at which three operator-levermen are employed around the clock; this tower is located about 1¼ miles from the freight station. Therefore, in the absence of a telegrapher to relieve McLean, and by the use of an available clerical employe to relieve him and perform the clerical work assigned to the job (which constitutes the greater portion of his duties), such telegraphing (44 messages dispatched and 23 received) were telephoned between the Wilson freight station and the operator-leverman at the tower.

OPINION OF BOARD: When this Carrier chose to assign other than a member of the Telegraphers' Organization to fill the vacation vacancy of the operator-clerk position at Wilson Freight Office from May 12 through May 30, 1958, its action violated Article 23(b) of the applicable agreement which stipulates that:

"(b) All positions covered by this agreement will be filled by employes holding seniority or entitled to hold seniority, . . ."

The record before us shows that Claimant Henry Proctor was, on the first day of the vacation period, the senior available extra telegrapher. Had he been assigned he would have been entitled to fill the vacancy. He is now entitled to recover a day's pay at pro rata for May 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1958, less what he may have otherwise earned, if any, during this period.

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 Employes involved in this dispute are respectively Carrier and Employes 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 of rules violation sustained.

Claim for damages disposed of as outlined in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.