

Award No. 14282
Docket No. TE-13942

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

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

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Washington Terminal Company, that:

1. Carrier violated the parties' Agreement by diverting employees from their regular positions and requiring them to perform service on other positions and, in so doing, failed and refused to properly compensate the employees involved at time and one-half as required by the Agreement.

2. Carrier shall be required to compensate the below named employees eight (8) hours at the applicable time and one-half rate for each date shown opposite his name, less the eight (8) hour pro rata amount paid by Carrier for each date specified:

D. E. Crandall	— Aug. 24, Sept. 5 & 6, 1961	(Carrier File ORT 61- 5)
D. K. Williams	— Sept. 3, 24 & Oct. 2, 1961	(Carrier File ORT 61- 7)
J. Callow	— Oct. 21 & 25, 1961	(Carrier File ORT 62- 1)
D. E. Crandall	— Oct. 31, 1961	(Carrier File ORT 62- 2)
J. Callow	— Dec. 26, 1961 & Feb. 1, 1962	(Carrier File ORT 62-28)
J. Callow	— Feb. 27 & Mar. 6 & 25, 1962	(Carrier File ORT 62-24)
R. J. Thomas	— Apr. 1, May 5 & 6, 1962	(Carrier File ORT 62-24)

EMPLOYEES' STATEMENT OF FACTS: In presentation of the facts relative to the claims involved in this dispute, reference is made to Part 2 of the Statement of Claim, which lists the names of claimants and dates of violations applicable to each. First listed is D. E. Crandall. He occupied a first trick leverman position at K Tower, with Friday and Saturday as rest days. His assignment required that he handle and operate the levers of the interlocking machine located on the north end thereof.

Another separate and distinct position of leverman is assigned on first trick, with Saturday and Sunday rest days, and this position is assigned to handle and operate the levers of the interlocking machine located on the south end. Said position is occupied by Mr. Jenkins.

Claimant	Date	Claim
11. J. V. Callow	2-1-62	Allow difference between straight time and overtime rate at Train Director. Article 7 ordered to work Tr. Dir.
ORT 62-24		
12. J. V. Callow	2-27-62	Vice Sager, allow difference between overtime and straight time as Train Director Account Article 7, being ordered to work Train Director.
13. J. V. Callow	3-6-62	Vice Sager, allow difference between straight and overtime rate as TD account Article No. 7 being ordered to Train Dir.
14. J. V. Callow	3-25-62	Vice R. Rinehart, allow difference between straight and overtime rate as TD, account being ordered to work B.O. Train Director, Article No. 7.
ORT 62-25		
15. R. J. Thomas	4-1-62	Allow difference TD and TD time and one-half account ordered off regular assignment, Article 7.
16. R. J. Thomas	5-5-62	Allow difference TD and TD time one-half account ordered off regular assignment, Article 7.
17. R. J. Thomas	5-6-62	Allow difference TD and TD time and one-half account ordered off regular assignment, Article 7.

The above time claims were timely denied by Train Master J. F. Johnston on the basis that the assignments were made in accordance with Article 14.

Train Master Johnston's denials of these claims were timely appealed by General Chairman E. G. Rapp to Manager M. H. Lingenfelter, and conferences were held. Following conference, the Manager rendered denial decisions, stating that the non-bulletined vacancies involved in these claims were filled in accordance with Article 14 and that the Article cited by the Organization, Article 7(a), had no application in the circumstances involved in these claims. The Manager's decisions were rejected, and under date of December 5, 1962, the Carrier was advised that the claims had been filed with the Third Division, National Railroad Adjustment Board. Copy of all correspondence is attached as Exhibit A.

OPINION OF BOARD: These claims arose out of the application of Article 14 of the effective Agreement. There are numerous claims involved and they have been brought on behalf of four individual Claimants.

In its Ex Parte Submission Carrier separates the claims into two categories. "Category I" involves the question of whether a towerman who moves up to fill a higher rated position on a regularly assigned workday on

the same hours and at the same location is entitled to be paid time and one-half at the rate of the higher rated position.

"Category II" involves the question of whether a leverman working on his regularly assigned hours in K Tower is entitled to time and one-half pay because he works the south end of the K Tower interlocking machine rather than the north end.

The Employees rely on Article 7 of the Agreement to support their claim for time and one-half pay. Article 14 (Filling Non-Bulletined Vacancies) and 14(c) (Tower Service Exception) are silent on the issue of pay.

We feel the Carrier has properly categorized these claims, and we will so dispose of them.

I.

We believe the Carrier properly followed Article 14(c) when it moved levermen to fill non-bulletined vacancies in a higher rated position. Since Article 14 sets the procedure the Carrier must follow in filling the non-bulletined vacancies, it cannot be held to be optional on the part of the individual employee. Article 7 has no application in this dispute.

II.

The Employees must bear the burden of proving that the north and south ends of the interlocking machine constitute different positions. There is no probative evidence in the record to show that a leverman is bulletined or assigned to one end of the machine.

It has long been an established principle of this Board that the burden of proof is on the party making the claim.

For the reasons we will deny the claims.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.

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