

Award No. 14432
Docket No. TE-11279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY
(Wheeling and Lake Erie District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad (Wheeling and Lake Erie District), that:

1. The Carrier violated the parties' Agreement when it permitted or required a clerical employe not covered by said Agreement to relieve the Agent at Dillonvale, Ohio, for his vacation period of 15 working days, commencing October 7, 1957.

2. The Carrier shall, because of the violation set forth above, compensate I. A. Dietrich, Agent, Dillonvale, Ohio for 15 days' pay at the time and one half rate of his position account improperly relieved by said clerical employe.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective, as to rules, February 1, 1952, and as to rates of pay, effective February 1, 1951, and as revised.

At page 58 of said Agreement is listed the position covered by the Agreement at Dillonvale. The listing reads:

Location	Position	Hourly Rate
Dillonvale	Agent	\$2.034

I. A. Dietrich, Claimant is the regularly assigned Agent at Dillonvale, Ohio. He has a work week of Monday through Friday, Saturday and Sunday rest days.

In addition to the Agent's position at Dillonvale covered by the Telegraphers' Agreement, there is a Cashier-Clerk's position covered by the Clerks' Agreement.

pute is, therefore, and herewith appealed to your Honorable Board for adjudication.

CARRIER'S STATEMENT OF FACTS: Claimant was regularly assigned as agent at Dillonvale, Ohio. His 1957 vacation of three weeks was originally scheduled for August but due to the unavailability of a vacation replacement, was deferred indefinitely. It was later rescheduled to begin October 7, 1957. The claimant was permitted to go on vacation as rescheduled. In the absence of a qualified extra telegrapher, a clerk in the same office was used to fill the agent's vacation vacancy.

In Carrier's Exhibits A through K, attached hereto, there is set forth the history of the handling of this claim on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regularly assigned Agent at Dillonvale, Ohio, a position covered by the Telegraphers' Agreement. Under the provisions of the Vacation Agreement he was entitled to fifteen (15) consecutive work days' vacation with pay for the calendar year 1957.

Claimant's vacation was scheduled according to the Agreement in August, but Carrier later deferred the vacation, notifying Claimant to commence his vacation on October 7, 1957. Carrier then filled his position with the Cashier-Clerk at the station, an employe covered by the Clerks' Agreement, and filled the Cashier-Clerk's position with an extra clerk for the period of the vacation.

This Board concurs with Referee Morse who stated in his classic 1942 award (p. 93) that the Vacation Agreement "cannot be applied in a manner which will cross craft or class lines." The Agreement was violated when an employe covered by the Clerks' Agreement and holding no seniority under the Telegraphers' Agreement was assigned to a position covered by the Telegraphers' Agreement.

Rule 15, paragraph (f) of the Agreement provides that known vacancies of less than 30 calendar days will be filled by qualified extra employes, but the parties agree that no qualified extra employe covered by the Agreement was available.

The Organization contends that since no qualified extra employe was available a qualified regular employe should have been used to fill the vacancy according to Rule 12 of the Telegraphers' Agreement governing seniority. That is, Claimant, the senior regular qualified employe in the position, who, being on vacation and not otherwise occupied, should have been called to fill the vacancy.

Carrier responds that Claimant is an improper party inasmuch as he was relieved to allow him that vacation to which he was entitled; that he was paid at his regular rate during his vacation according to the Vacation Agreement; that he has enjoyed all the rights that he had under that Agreement.

It is true that Claimant has enjoyed all the rights that he had under the Vacation Agreement, but it is also true that he has other rights, not mutually exclusive, under the Telegraphers' Agreement. One such right reserved to his craft is that seniority will be effective when vacancies occur (Rule 12).

Since Claimant holds the regular position by exercise of seniority it is presumed that such seniority establishes him the proper Claimant for the vacancy and the thus injured member of his craft upon its being filled outside the Agreement.

Claimant did not work during the period in question, however, and he received a vacation which cannot be withdrawn. It is the opinion of this Board that he thus be paid for the 15 days during which he was improperly relieved at the pro rata rate.

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 Employee involved in this dispute are respectively Carrier and Employee 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 is sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966.