

Award No. 14642
Docket No. TE-12788

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the Agreement between the parties when it allowed Extra Operator G. L. Hawkins to be displaced on the position of Agent-Telegrapher at Piedmont, Alabama on May 17, 1960.
2. Because of being deprived of this work to which entitled, Carrier shall compensate G. L. Hawkins in the amount of one day's pay of eight (8) hours at the rate of pay of the position of Agent-Telegrapher, Piedmont, Alabama for May 17, 1960.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1959, and its supplements are available to your Board and by this reference are made a part hereof as though set out word for word.

All stations involved in this dispute are located on the Georgia Division, Seniority District No. 3. All the employees involved seniority rights on Seniority District No. 3.

G. L. Hawkins, an extra employe, was filling a temporary vacancy of less than thirty days on the position of agent-operator at Piedmont, Alabama immediately prior to May 17, 1960.

Extra Employe C. B. Tibbetts, who is senior to G. L. Hawkins, was assigned to a temporary vacancy of eight work days' duration, relieving the incumbent of Relief Position (Swing) No. 10, F. C. Glover, for vacation starting Sunday, May 8, 1960.

The assignment of Swing No. 10 as follows:

Sunday and Monday	1st Shift Operator	Howells Yard
Tuesday	2nd Shift Operator	Howells Yard
Wednesday and Thursday	Report Clerk	Chief Dispatcher's
Friday and Saturday	REST DAYS	Office, Howells

accept oral advice of an employe, such as in this case, that he had completed an assignment, and upon Mr. Tibbetts' statement that he had completed the vacation work called for at Howells he was permitted to displace Mr. Hawkins off the agent-operator position at Piedmont and protected it himself beginning May 17th.

Claimant Hawkins worked the Piedmont assignment on May 16th and on May 17th was deadheaded under pay Ragland (extra board terminal) to Lawrenceville to work the agency there beginning May 18. On May 17 at approximately 3:30 P. M., the starting time of Swing Position No. 10 at Howells, it was learned by Chief Dispatcher that the regularly assigned incumbent of Swing Position No. 10, who was on vacation and who Mr. Tibbetts had been relieving, was in fact not due back to work until May 18 and that Mr. Tibbetts had wrongly reported regular incumbent returning May 17. This left Swing Position No. 10 unfilled May 17 due to begin service at 3:30 P. M., because Mr. Tibbetts had vacated same and gone to Piedmont. It was, of course, too late to restore the involved employes to their previous positions. It was necessary to locate and use a regularly assigned employe at Howells on his rest day, paying him the punitive rate, to work Swing Position No. 10 May 17. Claim was filed by Mr. Hawkins for one days' pay, 8 hours, for May 17, stating:

"1 Day claimed account allowing Operator Tibbetts to displace me on Agency Piedmont, Alabama before he had finished his assignment on F C Glovers swing Job at Howells Yard,"

Claim was handled and declined on the division and appealed to Director of Personnel in General Chairman Parker's letter of September 8, 1960 (Exhibit A with Attachment No. 1); decision containing an offer of settlement was made in letter from Director of Personnel Riggan to General Chairman Parker of November 4th (Exhibit B); discussed in conference November 8, 1960; offer of November 4th rejected in letter from General Chairman Parker to Director of Personnel Riggan November 25 (Exhibit C); claim further declined in letter from Director of Personnel Riggan to General Chairman Parker December 2, 1960 (Exhibit D); Organization interpolated their position as to claim in letter from General Chairman Parker to Director of Personnel Riggan December 10, 1960 (Exhibit E); Carrier refuted such position in letter December 12, 1960 from Director of Personnel Riggan to General Chairman Parker (Exhibit F); Organization advised they were appealing claim to their President, thus seeking payment on grounds Carrier violated Statute of Limitations, Rule 28, and that claim was supported by the agreement, letter from General Chairman Parker to Director of Personnel Riggan February 14, 1961 (Exhibit G). Claim is now before your Board for decision.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is an extra employe. Prior to May 17, 1960, Claimant was assigned to fill a temporary vacancy in the position of Agent-Operator at Piedmont, Alabama. Immediately prior to May 17, C. B. Tibbetts, an extra employe, was assigned to a temporary vacancy on Relief Position No. 10, due to vacation of the regular incumbent. The vacation vacancy was to terminate at the end of the work day on May 17th.

Tibbetts, who is senior in service to Claimant Hawkins, was allowed to displace him on the Agent-Operator position at Piedmont, effective May 17. This was one day prior to the termination of the assignment then held by Tibbetts. The Organization contends that Hawkins was wrongfully displaced on the 17th by Tibbetts. It is also contended that Time Limit Rule is involved.

We prefer, however, to dispose of the matter on the merits.

Shortly before August 19, 1955, a similar question, i.e., the right of one employe to displace another extra employe, when the former had not finished his then existing assignment, was discussed by the parties. On this date, the Director of Personnel, in letter to all concerned, stated:

"It is the position of the organization, and in which we concur, that when an extra employe is called to protect an assignment he can not exercise seniority over another extra employe until released from the assignment for which he was called."

It is agreed by the parties that Tibbetts had not, as of May 17, 1960, finished the assignment (Relief Position No. 10) for which he was called. The assignment was not terminated until May 18. It is, therefore, clear that Hawkins was wrongfully displaced by Tibbetts on May 17. This was recognized by Director of Personnel in letter to General Chairman, dated November 4, 1960, wherein it was stated:

"In view of the circumstances involved in this particular case, I am willing to dispose of it by allowing claimant G. L. Hawkins the difference between the compensation he has been allowed for travel time on May 17, going from Ragland to Lawrenceville, and what he would have earned on position of Agent-Operator had Tibbetts not displaced him on May 17."

Thus the primary question to be resolved is whether Carrier is entitled to credit the travel time against the loss of a day's pay for May 17, 1960. We find that Carrier is not entitled to set off the travel time, paid under Rule 27, against the loss of the day's wages to which Hawkins was contractually entitled. The payment for the deadhead (travel time) was for the trip from Ragland to Lawrenceville on the 17th. This trip was for the purpose of performing service at Lawrenceville on the 18th. There is no connection between failure to permit the Claimant to perform service on the 17th and his traveling to Lawrenceville to perform service on the following day. Claimant is entitled to be paid one day, at the rate of the Agent-Operator position, Piedmont, Alabama, at the May 17, 1960 rate.

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 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.

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