

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

G. E. Witherup did not leave a position in the promoted class of Train Dispatcher due to a reduction in force or physical disability, when he was permitted to displace Block Operator W. H. Bump from the relief block operator position at "AJ" Block Station, Kiski Junction, Pa., on December 11, 1960, therefore, instead of being permitted to exercise his seniority Mr. Witherup should have been placed on the Extra List as Regulation 2-S-1 (d) of the Telegraphers Agreement provides, further that W. H. Bump, J. A. Johnston, R. L. Shellhammer, R. G. Johnston and L. J. Davis regular Block Operators who were displaced from their permanent assignments as a result of this violation are entitled to receive time allowance as provided under Regulations 4-G-1, 4-J-1, 4-M-1, 4-R-1 and mileage allowance under Regulation 8-M-1 for each calendar day beginning December 11, 1960 until date claimants are returned to the respective positions they held prior to this violation.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 11, 1960, Mr. W. H. Bump was the regularly assigned relief Block Operator at "AJ" Block Station, Kiski (Kiskiminetas) Jet., Pennsylvania, with tours of duty on first shift Sundays and Mondays, second shift Tuesdays and Wednesdays, and third shift Thursdays. Rest days of this assignment were Fridays and Saturdays. This position is a "Group 2" position covered by the Telegraphers' Agreement with the Carrier.

Prior to December 4, 1960, G. W. Witherup was a regularly assigned train dispatcher on third shift in Pittsburgh, Pennsylvania, assigned to work five days per week with two rest days off. The assignment is designated as

of the present Telegraphers agreement was violated when Train Dispatcher G. E. Witherup was permitted to displace Block Operator W. H. Bump from the relief position at AJ Block Station on Sunday, December 11, 1960, further that W. H. Bump, J. A. Johnston, R. L. Shellhammer, R. G. Johnston and L. J. Davis regular Block Operators who were displaced from their regular assignments as a result of this violation are entitled to receive time allowance as provided under regulations 4-G-1, 4-J-1, 4-M-1, 4-R-1 and mileage allowance under regulation 8-M-1 for each calendar day beginning December 11, 1960 until date claimants are returned to the respective positions they held just prior this violation. Claim is presented under regulation 4-T-1 and Article 5 of 1954 agreement."

The claim was denied by the Supervising Operator in letter dated January 20, 1961.

Under date of January 23, 1961, the District Chairman listed a claim identical to that quoted at the beginning of this Submission with the Superintendent, Personnel, Pittsburgh Region, who by letter dated March 8, 1961, advised the District Chairman, in part, as follows:

"Under the provisions of Regulation 2-S-1 (d), Witherup's exercise of seniority in this case was proper, and claim is denied. Notwithstanding the foregoing, this is not a proper claim as it does not specify the actual dates that the alleged violation occurred for which compensation is claimed."

Subsequently, at the request of the District Chairman, a Joint Submission covering this matter was prepared, a copy of which is attached as Exhibit "B".

At a meeting held on October 5, 1961, the General Chairman discussed this claim with the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. In a letter dated October 27, 1961, the Manager, Labor Relations denied the claim.

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the question to be determined by your Honorable Board is whether Witherup's displacement of W. H. Bump, Jr., was proper and in accordance with Regulation 2-S-1(d).

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this instance are that Train Dispatcher Witherup, after being displaced on December 4, 1960 by a senior train dispatcher, displaced Block Operator Bump at "AJ" Block Station, Kiski Junction, Pennsylvania on December 11, 1960.

The Organization contends that Employee Witherup should have been placed on the extra list rather than be permitted to displace the Block Operator at "AJ" Block Station.

The Carriers' position is that Employee Witherup was forced to leave his position of train dispatcher by reason of being physically disabled and

therefore Regulation 2-S-1 (d) authorized Employee Witherup to displace said Block Operator at "AJ" Block Station.

Regulation 2-S-1 (d) provides:

"(d) A Group 2 employe accepting promotion to any of the positions covered by paragraphs (a) or (b) of this regulation (2-S-1), may, if he leaves such a position by reason of a reduction in force of physical disability, exercise his accumulated seniority in accordance with the provisions of this Agreement. If a Group 2 employe leaves such a position by reason of any cause other than those listed in this paragraph (d) he shall be placed on the extra list."

The question resolves itself down to whether or not Employee Witherup was "physically disabled" so as to permit him to exercise his accumulated seniority to displace the Block Operator at "AJ" Block Station.

Carrier admits that it has the burden of proving that Employee Witherup was physically disabled in order to show that the agreement herein was not violated.

In support of its position that Employee Witherup was physically disabled, Carrier submitted copy of medical report, marked "Exhibit A", covering medical examination of Employee Witherup, dated December 7, 1960, signed by W. M. Woodward and a Dr. Moriarty. In said medical report, under "Remarks" was written the following:

"Mr. Witherup has a chronic disability and for this reason special duty hours are recommended. 'Daylight or 2nd Trick' is recommended. This has the approval of personal physician Dr. Allman."

The Organization contends that said medical report is not a bona fide medical report in that it does not show a specific disability but only a conclusion, and therefore said report amounts to a "sham" medical report; that the Carrier has failed to sustain its burden of showing that Employee Witherup was "physically disabled" and as a result the agreement was violated when Witherup was permitted by the Carrier to bump the Employee at "AJ" Block Station.

Examination of said medical report shows it to be very vague and sketchy. The report does not disclose any facts upon which the conclusion of "chronic disability" is based. Further, said statement of "chronic disability", without anything further, is a conclusion on the part of the person making such an opinion-statement.

This Board cannot give weight to such a medical report or opinion inasmuch as it is not supported by sufficient evidence as to the facts upon which it is based.

Therefore, it is the conclusion of this Board that the Carrier failed to sustain its burden of showing that Employee Witherup was "physically disabled", and as a result thereof the Carrier violated this Agreement. Thus, the Claim will be sustained.

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 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 3rd day of August 1966.

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)****INTERPRETATION NO. 1 TO AWARD NO. 14735****DOCKET NO. TE-13772****Name of Organization:****TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)****Name of Carrier:****THE PENNSYLVANIA RAILROAD COMPANY**

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

This request for interpretation comes from the Organization's position that the Carrier failed to consider Regulations 4-G-1; 4-J-1; 4-M-1; 4-R-1; and 8-M-1 of the Agreement in computing compensation due Claimants by virtue of this Board's decision in sustaining the claim of Claimants.

The Claimants herein are entitled to be "made-whole" for any monetary loss they might have suffered due to the violation of the Agreement, and any monetary loss is to be determined by the amounts of money they would have earned if the violation did not occur, minus the amount of money they actually earned from the date of the violation to the date of compliance with this Board's order.

Further, there was no evidence in the record that Claimants were required to suspend work for the purpose of absorbing overtime in violation of Regulation 4-G-1; and no evidence was shown that Claimants were required to work on their assigned rest days in violation of Regulation 4-J-1; and no evidence was adduced to show that Claimants actually incurred expenses in violation of Regulation 4-R-1; and no evidence was in the record to show that Claimants were requested to use their privately owned automobiles for company use in violation of Regulation 8-M-1.

Referee, Paul C. Dugan, who sat with the Division, as a member, when Award No. 14735 was adopted, also participated with the Division in considering the application for interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1967.