

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, 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, that:

1. Carrier violated the Agreement between the parties when it failed to use Leverman D. E. Crandall to relieve Leverman Lovell and required Lovell to work overtime in excess of four hours on July 30, 1960.

2. Carrier shall be required to compensate D. E. Crandall in the amount of eight hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 16, 1955, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

On July 30, 1960, there were three vacancies to be filled on the second shift (3:00 P. M. to 11:00 P. M.), viz., Assistant Train Director at "A" Tower, a Leverman at "K" Tower, and a Leverman at "C" Tower. The first two vacancies were filled by extra employees in accordance with the provisions of the Agreement, and are not a part of this dispute. We are here concerned with the vacancy at "C" Tower.

All available qualified extra employees had been used. Leverman D. E. Crandall, regularly assigned to a second shift position, was idle on his rest day. The Crew Clerk attempted to reach Crandall by telephone at 1:20 P. M., and received no answer. Leverman Lovell, occupant of the first shift (7:00 A. M. to 3:00 P. M.), Leverman position at "C" Tower, was instructed to work overtime to cover this vacancy and was required or permitted to remain on duty until 11:00 P. M.; a total of 16 hours — 8 hours on his regular assignment and 8 hours overtime.

Article 4(i) of the Agreement reads as follows:

"Except in an emergency, overtime assignments of Levermen shall not be in excess of four (4) hours."

Under date of October 4, 1960, Train Master J. F. Johnston rendered decision denying the claim on the basis that Claimant Crandall had been called and failed to respond to the call. Copy of the Train Master's decision is attached as Exhibit B.

On December 3, 1960, General Chairman E. G. Rapp addressed a letter to Manager M. H. Lingengelter requesting a twenty-day extension of the time limit in which to file and appeal. Mr. Rapp stated: "I request this due to the nature of this claim and the fact that if progressed would have, if sustained, the effect of changing policy, to some extent, on filling positions on rest days." Copy of the General Chairman's letter of December 3, 1960, is attached as Exhibit C.

On December 6, 1960, Manager M. H. Lingenfelter wrote General Chairman Rapp agreeing to extend the time limit. Copy of the Manager's letter of December 6, 1960, is attached as Exhibit D.

On December 17, 1960, General Chairman Rapp wrote Train Master Johnston, commenting on the Train Master's decision of October 4, 1960, and advising him that his decision of October 4 was being appealed. Copy of General Chairman Rapp's letter of December 17, 1960, to Train Master Johnston is attached as Exhibit E.

Also on December 17, 1960, General Chairman Rapp addressed a letter of appeal to Manager Lingenfelter setting forth the Organization's position with respect to this claim. Copy of the General Chairman's appeal letter dated December 17, 1960, is attached as Exhibit F.

Appeal conference was held on February 10, 1961, and on February 13, 1961, Manager Lingenfelter rendered decision denying the claim. Copy of the Manager's letter of decision dated February 13, 1961, is attached as Exhibit G.

On March 24, 1961, the General Chairman wrote the Manager, stating in part, "Not being able to concur in your denial of this claim, we will therefore make appropriate appeal in accordance with Article 21." A copy of the General Chairman's letter of March 24, 1961, is attached as Exhibit H.

Under date of November 9, 1961, the Organization, by G. E. Leighty, President, referred this dispute to the Third Division, National Railroad Adjustment Board, claiming that the Carrier should compensate Claimant Crandall in the amount of eight hours at the time and one-half rate. Copy of President Leighty's letter of November 9, 1961, is attached as Exhibit I.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 30, 1960, there was a tower service position vacancy on the 3:00 P. M. to 11:00 P. M. shift. In compliance with Article 14(c) of the Agreement the Crew Clerk, at about 1:20 P. M., attempted to call Claimant, the senior qualified regularly assigned towerman out on his assigned rest day, to fill the position. Claimant did not answer the telephone. Then the Crew Clerk, in accordance with Article 14(c)(4), assigned Leverman Lovell, who was working the 7:00 A. M. to 3:00 P. M. shift, to work 4 hours overtime. Then he attempted to get a leverman from the succeeding shift to report 4 hours in advance to cover the vacancy for the remaining 4 hours. None was available. Thereupon, the Crew Clerk assigned Leverman Lovell to work the additional 4 hours.

The facts which give rise to the issue are that Claimant, shortly after the 3:00 P. M. shift commenced work, telephoned the Crew Clerk that he was

available if needed; and, notwithstanding this the Crew Clerk caused Leverman Lovell to work overtime in excess of 4 hours.

Carrier admits that Claimant stood to fill the vacancy on the 3:00 P. M. shift. But, it argues that since it called Claimant at 1:20 P. M. and he did not respond that it had no further contractual obligation toward him even though it had knowledge of his availability to work the four hours between 7:00 and 11:00 P. M.

Petitioner, pointing out that there was no emergency, charges Carrier with violation of Article 4(i) which reads:

“(i) Except in an emergency, overtime assignments of Levermen shall not be in excess of four (4) hours.”

We find that: (1) Article 4(i) is unequivocal; and, (2) Carrier having knowledge of Claimant's availability to work had the contractual obligation to call him and release Leverman Lovell, after the latter had worked 4 hours overtime, to effectuate compliance with Article 4(i). We will sustain paragraph 1 of the Claim.

The Claim processed on the property prayed that Claimant be made whole “for eight hours at straight time”. Paragraph 2 of the Claim submitted to this Board prays for “eight hours at the time and one-half rate.” It is well established that a petitioner may not enlarge the claim processed on the property when the dispute is submitted to this Board. Accordingly, we will sustain paragraph 2 of the Claim limiting the compensation to eight hours 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 Carrier violated the Agreement.

AWARD

Paragraph 1 of Claim sustained.

Paragraph 2 of Claim sustained to extent set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.

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