

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

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

1. The Carrier violated the parties' Agreement when it used extra telegrapher L. D. Pownell, who had already worked 40 hours in his work week to perform service on the agent-telegrapher's position at Delphi, Indiana, on Saturday, March 21, 1959; and on the first shift telegrapher's position at Lafayette, Indiana, on Sunday, March 22, 1959, and to thereby deprive E. E. Gushwa and H. H. Hartman of work and compensation due them under applicable rules.

2. The Carrier shall, because of the violations set out above, compensate E. E. Gushwa and H. H. Hartman, regular occupants of the positions upon which improper rest day relief was performed, eight (8) hours' pay at the time and one-half rate, the amount they would have earned had they been permitted to work on the rest day of their respective positions.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, and as amended.

The claimants in this dispute are the regularly assigned agent-telegraphers, E. E. Gushwa, Delphi, Indiana, and H. H. Hartman, the regularly assigned occupant of the first shift telegrapher's position at Lafayette, Indiana.

Rest Day Relief Position No. 20 is assigned to perform rest day relief service on Claimant Gushwa's position on Saturday, and on Claimant Hartman's position on Sunday.

Extra Telegrapher L. D. Pownell was, under applicable rules, assigned to the West Point, Indiana agency on March 16, 1959, to relieve the agent-telegrapher at that station for his two weeks' vacation.

22nd, 1959, account requiring L. D. Pownell, Extra Board Operator to work at Delphi Agency on the claimed dates.

Without regard whatever for any merit continued in your claim I hereby decline such claim because it was not presented under the 60-day time limit specified in Article 5 of the Agreement signed at Chicago August 21st, 1954, with the employees represented by the fifteen (15) Cooperating Railroad Labor Organizations signatory thereto."

Copy of all of the correspondence had between the parties is attached hereto and made a part hereof, marked Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 27, 1959, Employees filed their original claim based on the alleged improper use of Extra Telegrapher L. D. Pownell on March 21 and 22, 1959, in behalf of Extra Telegrapher R. B. Bagnall, who Employees claimed, should have been used. On July 3, 1959, Employees filed what they claim was an amended claim, based also on the alleged improper use of Pownell on those days, but this time claiming that Gushwa and Hartman, the two regularly assigned incumbents of the positions on which Pownell was allegedly improperly used, had been entitled to the work. Employees argue that because the "amended claim" was not substantially different from the April 27th claim, Employees were in compliance with the time limit rule.

Carrier argues that the July 3rd claim was a new claim filed more than sixty days after the event on which it was based and is therefore barred by the time limit rule from consideration on its merits.

In the letter filing the April 27th claim Employees say:

"This claim is being filed under Telegraphers' Agreement, dated September 1, 1955; Rule 7, Section 1, Paragraphs (h) and (i). . . ."

The "amended claim" would clearly involve (and did involve) a discussion of the application of other portions of the Agreement, including Rule 7, Section 2 (d) and, as set forth at length in Employees' Ex Parte Submission, the Mediation Agreement (Case A-2070) signed July 13, 1945.

We find that the "amended claim" involved a substantively different dispute from the original claim and was thus a new claim; as such, it was filed too late under the time limit rule to entitle it to consideration on its merits.

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 Claim was not timely filed.

AWARD

Claim dismissed.

**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.