

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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:

The Carrier illegally established a relief position in violation of the applicable agreement, effective February 8, 1958, comprehending the following schedule:

Harvey	Tuesday	3:00 P. M. until 11:00 P. M.
Troyton	Wednesday	3:00 P. M. until 11:00 P. M.
Stack	Thursday	11:00 P. M. until 7:00 A. M.
Carrothers	Friday	11:00 P. M. until 7:00 A. M.
Tiffin	Saturday	11:00 P. M. until 7:00 A. M.
Rest Days	Sunday and Monday	
Headquarters	Carrothers	

The above relief schedule comprehends work on two (2) separate seniority districts, the Columbus and Eastern seniority districts; Harvey and Troyton being on the Columbus and Stack, Carrothers and Tiffin on the Eastern seniority district. The establishment of this relief position is in violation of Regulation 1-B-1 (a) and 2-M-1 (a) of the applicable agreement. Because of this violation Mr. B. Noe, extra employe on the Columbus seniority district, submitted time card claiming eight (8) hours' pay at the straight time rate for February 19, 1958, being available and not called to perform work at Troyton 3:00 P. M. until 11:00 P. M., further in accordance with Regulation 4-T-1 and Article five (5) of the August 21, 1954 agreement, claim is hereby made on behalf of available extra employe for each succeeding Tuesday and Wednesday this relief position is worked from another seniority district. The aggrieved employes are:

P. F. Scott	William Mann
C. J. Vickroy	W. R. Ober
A. L. Gausepohl	Bobby Noe
T. R. Pratt	C. J. Mounts
R. I. Ashton	C. J. Kinstler
W. Rone	C. L. Eldridge
D. E. Godown	R. E. Overfield
P. R. Torrence	D. E. Scott
B. Baptiste	R. Benjamin

If no extra employe is available, claim is made on behalf of the regular incumbents at Harvey second trick D. M. Shroll, regular incumbent Troyton second trick J. L. Ream for each Tuesday and Wednesday and until this violation is corrected. Retroactive from the date this relief position was established.

EMPLOYES' STATEMENT OF FACTS: This dispute involves the establishment of a regular relief assignment to perform rest day relief work in five different offices, all located in the State of Ohio. Relief positions, such as here involved, are established pursuant to the following rules of the Telegraphers' Agreement currently in effect between the parties:

"RULE 5-G-1.

(f) All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of assignments in six (6) and seven (7) day service, or combinations thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned.

Assignments for regular relief positions may on different days include different starting times, duties, and work locations for employes of the same group in the same seniority districts, provided they take the starting time, duties, and work locations of the employe or employes whom they are relieving."

The dispute was triggered by the Carrier in its issuance of the following bulletin:

"THE PENNSYLVANIA RAILROAD
LAKE REGION

Cleveland, Ohio
January 29, 1958

EMPLOYES COVERED BY REGULATIONS FOR
THE GOVERNMENT OF BLOCK OPERATORS,
TELEGRAPHERS, ETC.

BIDS WILL BE RECEIVED BY OFFICER NAMED BELOW
UP TO AND INCLUDING FEBRUARY 8, 1958

EASTERN DISTRICT
BULLETIN NO. 1

Occupation	Location	Tour of Duty	Relief Days	Rate of Pay
Block Oper.	Harvey	Tues. 3 PM to 11 PM		
Block Oper.	Troyton	Wed. 3 PM to 11 PM		
Block Oper.	Stack	Thur. 11 PM to 7 AM		
Block Oper.	Carrothers	Fri. 11 PM to 7 AM		
Block Oper.	Tiffin	Sat. 11 PM to 7 AM	Sun & Mon	\$2.435

The Superintendent-Personnel also advised that the claim had been denied by the Buckeye Region merely to comply with the time-limit provisions for handling disputes.

In a letter dated September 8, 1958, the Local Chairman, Columbus District, listed a claim for discussion with the Superintendent-Personnel, Buckeye Region. Claim was essentially the same as that appearing in Employees' Statement of Claim, except that the names of Messrs. Shroll and Ream were not included. Following discussion of September 26, 1958, claim was denied by letter dated October 27, 1958, to the Local Chairman, Columbus District, by the Superintendent-Personnel, Lake Region.

In a letter dated November 3, 1958, the Local Chairman rejected the decision of the Superintendent-Personnel, Lake Region, and requested that a Joint Submission be prepared. A copy of the completed Joint Submission dated November 2, 1959, is attached hereto as Carrier's Exhibit A.

The matter was then discussed by the Manager-Labor Relations and General Chairman at meeting on December 18, 1959. In letter dated January 11, 1960, the Manager-Labor Relations denied the claim on the basis that Mr. Rotruck had prior right to the vacancy over the Claimants; that, in any event, the claim is not valid because it had not been handled in accordance with Article V of the August 21, 1954 Agreement.

Therefore, so far as the Carrier is able to anticipate the arguments of the Organization, the questions to be decided by your Honorable Board are (1) whether the handling of this matter on the property has been timely as required in Article V of the Agreement dated August 21, 1954; and (2) whether the establishment of the Relief Operator position violated Regulation 1-B-1 (a) and 2-M-1 (a) of the Agreement, and whether Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier has raised several procedural and jurisdictional issues, all of which are found to be without foundation and are, therefore, rejected. The claim is properly before the Division and should be decided on the merits.

It is an undisputed fact, as disclosed in the record, that the Carrier established a regular relief position which required the assigned employe to perform relief work in two distinct seniority districts. This position was so advertised by bulletin.

Petitioner argues that the Agreement does not permit the establishment of a position where work is to be performed in two separate seniority districts, and cites Rules 1-B-1(a), 2-M-1(a) and 5-G-1(f) in particular. The pertinent parts of these rules read:

"1-B-1(a) Permanent new positions and permanent vacancies shall be advertised within ten (10) days on the Division or seniority district where they occur and shall be advertised for ten (10) days following the date on which the bulletin is posted. . . ."

* * * * *

"2-M-1(a) A separate seniority roster for Group 2 employes for each seniority district shall be placed on file at each office in the district. . . ."

* * * * *

"5-G-1(f) . . . Assignments for regular relief positions may on different days include different starting times, duties, and work locations for employes of the same group in the same seniority district, providing they take the starting time, duties, and work locations of the employe or employes whom they are relieving."

Carrier, on the other hand, argues "that as long as Block Operator R. Rotruck and other Block Operators, who hired in the former Toledo Division territory, continue in the employ of the Carrier, the Toledo Division territory as constituted on October 31, 1950, shall properly be considered a seniority district for such employes." Under these circumstances, the newly established relief position was entirely within the existing seniority district of the former Toledo Division. "This is true," says the Carrier, "regardless of the fact that said relief position coincidentally included block stations on portions of the Columbus and Eastern seniority districts as they existed on and after November 1, 1950."

Effective November 1, 1950, the Toledo Division was abolished. One portion became part of the Eastern Division, and another portion became part of the Columbus Division. The relief position here involved required the assigned employe to perform work in both Divisions. Each Division is a separate seniority district. No Toledo Division existed when this relief position was established on January 29, 1958.

Rule 1-B-1(a) is clear and meaningful. It is not ambiguous. Carrier is obliged to advertise permanent new positions on one Division or on one seniority district. There is no authority to advertise a single new position on two or more Divisions or on two or more seniority districts. Bulletin No. 1 clearly shows that the work of the new relief position was to be performed at locations in the Eastern Division and at locations in the Columbus Division, each of which is a separate seniority district. The mere fact that R. Rotruck held prior right seniority on the former Toledo Division does not give Carrier the right to advertise the position in the two Divisions or in the two seniority districts.

Similarly, Rule 5-G-1(f) limits assignments for regular relief positions to work locations in the same seniority district as the employes relieved. The work locations in the advertised new relief position were in two seniority districts, and the employes relieved held seniority in separate and distinct seniority districts.

Past practice may be considered only when the contract language is ambiguous and it is necessary to ascertain the meaning and intent of the parties. We have already said that Rule 1-B-1(a) is not so ambiguous. Therefore, the fact that a similar single situation occurred in 1952 and no complaint was filed by Petitioner has no bearing in this case.

It is admitted that Claimant, D. M. Shroll, had more seniority on the Columbus Division and more prior seniority rights in the former Toledo

Division. This fact did not obligate Shroll to submit his bid on the new relief position which was established and advertised in violation of the Agreement. He is a proper Claimant.

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 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 28th day of October 1966.