

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Edward A. Lynch, 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 Company, that:

J. P. Herron, regularly assigned third trick Operator at Buttonwood, be allowed a three-hour call at Buttonwood, April 15, 1960, account no extra man available and second trick Operator work 1 hour overtime and third trick Buttonwood being closed one-half hour. Overtime Agreement.

EMPLOYEES' STATEMENT OF FACTS: Buttonwood, Pennsylvania, is located 3 miles west of Wilkes-Barre, Pennsylvania, on Carrier's Wilkes-Barre Branch, extending from Wilkes-Barre 63 miles westward to Sunbury, Pennsylvania. At Buttonwood Carrier maintains three positions of Block Operator, assigned by shifts 7:00 A. M.-3:00 P. M.; 3:00 P. M.-11:00 P. M.; and, 11:00 P. M.-7:00 A. M. Each position works seven days per week. The regular incumbents are assigned five days' work per week, with two consecutive rest days off. On their rest days they are relieved by a regularly assigned relief employe.

Claimant J. P. Herron was the regularly assigned relief employe at Buttonwood with a work schedule arranged so that he worked first shift on Sunday and Monday, second shift Tuesday, and third shift Wednesday and Thursday. His rest days were Friday and Saturday.

C. L. Dolly was the regularly assigned third shift Block Operator at Buttonwood with a work assignment extending Friday through Tuesday, with rest days of Wednesday and Thursday. Friday, April 15, 1960, was a work day for Mr. Dolly. He became ill, and notified the Carrier before 3:00 P. M. (8 hours in advance) that he would be unable to work that night, 11:00 P. M.-7:00 A. M. The only extra man without an assignment on this date was Block Operator E. W. Hawk. He could not be located.

Extra Block Operator E. J. Troutman, who resided at Buttonwood, was engaged in filling another relief assignment during this particular week. He worked Tuesday, April 12, on third shift Kase, Wednesday, April 13, on third shift Buttonwood, and Thursday, April 14, on third shift Norca. On

by letter of May 13, 1960. The Supervising Operator was never notified in writing of the rejection of his decision as required by Article V, Section 1 (b) of the National Agreement of August 21, 1954.

By letter dated July 4, 1960, the District Chairman, Order of Railroad Telegraphers, listed a claim with the Superintendent, Personnel, Northern Region, in substantially the same form as that quoted at the beginning of this Submission. The Superintendent, Personnel denied the claim by letter of August 9, 1960. Subsequently, at the request of the District Chairman, a Joint Submission covering the matter was prepared, a copy of which is attached as Exhibit A.

At a meeting on February 24, 1961, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations, denied claim by letter of March 24, 1961, pointing out, in part, that:

"During discussion of this subject, it was your position the regular incumbent of the Relief Block Operator's position, who was off duty observing his rest day, and who represents positions at this location on regular incumbent's rest day, was entitled to be called to fill vacancy in question as provided in Item 2 of the Local Overtime Agreement dated August 30, 1957.

It was pointed out to you that the instant case merely involved a vacancy developing at Buttonwood, and that this vacancy was properly filled by an extra Operator at the straight time rate of pay.

No overtime work being involved, the local overtime Agreement in effect on the Region has no application in this case.

Claim is without merit, and is denied."

A copy of the local overtime agreement of August 30, 1957, referred to above, is attached as Exhibit B.

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether the provisions of the Overtime Agreement of August 30, 1957, or of the applicable Rules Agreement, entitle the claimant to a three-hour call for April 15, 1960.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's action here subject to claim arises as a result of its assignment of extra operator E. J. Troutman to fill a temporary vacancy on the third shift at Carrier's Buttonwood Block Station on April 15, 1960.

At 3:00 P.M., on that date, the regular employe reported that he was ill and could not report for work at 11:00 o'clock that night.

Carrier was unable to locate any unassigned extra employe to fill the vacancy. It assigned the work to E. J. Troutman, an extra operator, who was originally scheduled to work at Kips Tower, some 50 miles distant, that

Night. Upon reporting at Kips, Troutman was notified to report to Buttonwood and fill the third trick vacancy there. He arrived at Buttonwood at 12:32 A.M., April 16, 1960. Operator W. H. Duncan, who was posting at Buttonwood, answered the telephones until Troutman arrived at 12:32 A.M.

It is the position of the Organization that Troutman was "not actually available for duty there at Buttonwood, as Kips is about an hour and a half drive by automobile, and it would be impossible for him to relieve the 2nd trick operator within his nine hours." As it worked out, the 2nd trick man worked one hour overtime, and an extra employe posting at Buttonwood on the second trick remained and answered the telephones after the tower had been closed by train order. It was 12:32 A.M. when Troutman arrived.

Carrier describes it as a case which involves a vacancy which developed at Buttonwood, and it was "properly filled by an extra operator at the straight time rate of pay.

"No overtime work being involved," Carrier asserts, "the local overtime Agreement in effect on the Region has no application in this case."

The Agreement in question was entered into August 30, 1957 by these parties, and provides for the filling of vacancies when necessary to fill such vacancies at the time and one-half rate of pay, **directly or indirectly.**

The Organization predicates its claim on its assertion extra operator Troutman was not "available" when Carrier assigned him to vacancy at Buttonwood.

Troutman, the Organization argues, "was filling a vacancy at Kips. He had not finished that assignment, but was scheduled to work it the night of April 15, 1960, and, in fact, did report for work there. Obviously, Troutman was not physically available for work at Buttonwood when the vacancy began."

The Organization's position is correct. Awards 13808 and 14882, among others.

The claim here is in favor of J. P. Herron, who has a regular relief assignment which provides rest day relief for other employes at Buttonwood, including the third shift on Wednesday and Thursday of each week. His assigned rest days are Friday and Saturday. The incident giving rise to this claim occurred on Friday. Claimant J. P. Herron was available, and should have been called.

The claim for a three hour call 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 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 16th day of November 1966.