



Award No. 15056
Docket No. TE-13995

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad (Erie District), that:

1. Carrier violated the Telegraphers' agreement when beginning on July 10, 1961 and continuing thereafter it has improperly relieved Agent-Operator H. C. Cram at Mt. Jewett by Mrs. Eva Huston, an employe from the Clerk's roster, not covered by the Telegraphers' agreement. Since July 19th Mr. Cram has been diverted to work various agency positions within his seniority district.

2. Carrier violated the agreement when beginning in July 1961 and continuing thereafter it has improperly used Mr. W. A. Woodin, a MofW employe, not covered by the Telegraphers' agreement to perform service at NE Tower, Niobe Junction.

3. The Carrier shall because of the violation set forth in part one of this Statement of Claim, compensate Mr. H. C. Cram for a day's pay (8 hours) at the rate of his regular position and for any expenses incurred each day, Monday through Friday that he was improperly relieved, in addition to any other wages paid him by the Carrier, as long as violation continues.

In addition Carrier shall compensate the senior idle employe, extra in preference, a day's pay for each day, Monday through Friday at the Pro rata rate of the Agent-Operator position at Mt. Jewett, so long as violation continues. Carrier shall furnish the names of employes eligible to receive compensation and shall permit a joint check of records to determine the dates of violation and the amounts due employes. It is known that extra operator H. F. Magiera was idle beginning the week of August 14th, 1961.

4. The Carrier shall because of the violation set forth in part two of this Statement of Claim, compensate the Senior idle employe, extra in preference, a day's pay for each day that Mr. Woodin was improperly used at "NE" tower.

Carrier shall furnish the names of employees eligible to receive compensation, this will include employees on their rest days.

In addition Carrier shall permit a joint check of records to determine the dates of violation and the amounts due employees. (Carrier File: 220.90 Item 221)

EMPLOYEES' STATEMENT OF FACTS: The facts in relation to Paragraph 1 of the Statement of Claim shall be given first. Agent-Operator Harry Charles Cram was the regularly assigned occupant of a position, so classified, at Mount Jewett, Pennsylvania. Said position is the only position at Mount Jewett, and is assigned Monday to Friday with Saturday and Sunday rest days, with work hours of 8:00 A. M. until 5:00 P. M. which includes one hour for lunch.

Commencing July 10th, 1961, Carrier used Mr. Cram on other positions, relieving other employees for their vacations. During the period Mr. Cram was diverted to cover other positions than his own, his position at Mount Jewett was covered by a Mrs. Eva Huston, who is an employee of Carrier and who holds seniority on the roster of employees represented by the organization representing her craft or class, namely, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Paragraph 2 of the Statement of Claim deals with a situation where, commencing in July 1961, Carrier used the services of a Mr. William Andrew Woodin, an employee holding seniority in another craft or class, namely, Brotherhood of Maintenance of Way Employees, and who was used to cover vacation vacancies of ORT employees at "NE" Tower, Niobe Junction, New York.

The first part of Paragraph 3 of the Statement of Claim adverts to Paragraph 1 and requests payment of 8 hours' pay, and expenses, for Mr. Cram for each day he was improperly relieved, in addition to any other wages he was paid.

The second part of Paragraph 3 also relates to Paragraph 1 and requests payment of 8 hours straight time pay each day for the senior idle employee, preference given to extras, for each day that the clerk (Eva Huston) was wrongfully assigned to work the position at Mount Jewett. The paragraph in discussion also requests that Carrier furnish the names of eligible claimants; that the dates of violations and amounts due said claimants be determined by a joint check of Carrier records.

Paragraph 4 of the Statement of Claim makes a compensatory request similar to that contained in the last above paragraph, for the work performed by the Maintenance of Way employee, under Paragraph 2.

The bodies of the letters exchanged between the parties in the property handling of this case are hereinafter below reproduced, following the prefacing identification of each such letter:

GENERAL CHAIRMAN MATTHEWS TO
W. F. WILSON, SUPERINTENDENT, JULY 24, 1961

"I have been advised by many sources that employees covered by agreements other than 'The Order of Railroad Telegraphers' agree-

ment are presently being used to relieve employees assigned to positions covered by the Telegraphers agreement.

To what extent this violation of the Telegraphers' agreement has been carried, I have not ascertained, as yet. However, I do intend to make a complete investigation of this situation and for every violation that I find, there will be a time claim filed.

I trust that you will take immediate steps to correct these conditions. Furthermore, will you kindly furnish me with information concerning whom these employees are that are being used above, where and whom they are relieving."

MR. W. F. WILSON, SUPERINTENDENT, TO
GENERAL CHAIRMAN MATTHEWS, AUGUST 14, 1961

"Your letter July 24, File 14-N-58 relative employees covered by agreements other than 'The Order of Railroad Telegraphers' being used to relieve employees assigned to positions covered by the Telegraphers agreement.

This vacation schedule is made up at the beginning of the year and based on the number of extra employees available to cover this work. However, conditions change after vacation schedule is out making it necessary to make changes in schedule.

This happened this year as we had Operator O. C. MacEntarfer at NE Junction off to be operated on for a long standing hernia condition, during the month of June and part of July, Agent R. F. Okneski at Eden Center off account illness during this period, Operator K. E. Boss at 'GB' Tower who failed to report for duty at the completion of his vacation May 26 and has not as yet returned to work.

Due to these men being off and using R. S. Dotson as Car Distributor place of Mr. R. B. Gardner, it resulted in a shortage of men to cover vacation schedule. To overcome this, Mrs. Eva Huston, a furloughed clerk, was used to cover the Agent's position at Mt. Jewett, and Mr. W. A. Woodin was used to cover vacation assignment at NE Junction. Mr. Woodin was also a furloughed MofW employe. Both were transferred to the Operators' Roster temporarily to cover these jobs and are subject to recall in their own department.

This was done to give our own furloughed employees the work instead of hiring inexperienced men to cover these positions. Can see no violation of the agreement by doing this as all available extra men were being used."

GENERAL CHAIRMAN MATTHEWS TO
J. J. FITZGERALD, CHIEF DISPATCHER, SEPTEMBER 5, 1961

"The General Committee of The Order of Railroad Telegraphers presents the following claim:

1. Carrier violates the telegraphers' agreement when beginning on July 10, 1961 and continuing thereafter it has improperly

relieved Agent-Operator H. C. Cram at Mt. Jewett by Mrs. Eva Huston, an employe from the Clerk's roster, not covered by the Telegraphers' agreement. Since July 10th Mr. Cram has been diverted to work various agency positions within his seniority district.

2. Carrier violates the agreement when beginning in July 1961 and continuing thereafter it has improperly used Mr. W. A. Woodin, a MofW employe, not covered by the Telegrapher's agreement to perform service at NE Tower, Niobe Junction.
3. The Carrier shall because of the violation set forth in part one of this Statement of Claim, compensate Mr. H. C. Cram for a day's pay (8 hours) at the rate of his regular position and for any expenses incurred each day, Monday through Friday that he was improperly relieved, in addition to any other wages paid him by the Carrier, as long as violation continues.

In addition Carrier shall compensate the senior idle employe, extra in preference, a day's pay for each day, Monday through Friday at the Pro rata rate of the Agent-Operator position at Mt. Jewett, so long as violation continues. Carrier shall furnish the names of employes eligible to receive compensation and shall permit a joint check of records to determine the dates of violation and the amounts due employes. It is known that extra operator H. F. Magiera was idle beginning the week of August 14th, 1961.

4. The Carrier shall because of the violation set forth in part two of this Statement of Claim, compensate the senior idle employe, extra in preference, a day's pay for each day that Mr. Woodin was improperly used at 'NE' Tower.

Carrier shall furnish the names of employes eligible to receive compensation, this will include employes on their rest days.

In addition Carrier shall permit a joint check of records to determine the date of violation and the amounts due employes.

Will you kindly advise if you will allow claim and if so, what arrangements you wish to make for a joint check."

J. J. FITZGERALD, CHIEF TRAIN DISPATCHER,
TO GENERAL CHAIRMAN MATTHEWS, SEPTEMBER 11, 1961

"Your letter September 5th claiming violation of Telegraphers Agreement account using Mrs. Eva Huston an employe from the clerks roster to relieve Mr. H. S. Cram as agent at Mt. Jewett, Pa., on July 10th, also using Mr. W. A. Woodin an employe on the clerks roster as operator at 'NE' Junction Niobe, N.Y., indicates you did not know that both of these employes were furloughed and out of work. Both were transferred to the Telegraphers roster when used.

tions covered by the Telegraphers' Agreement. This procedure, which as stated is consistent with the National Vacation Agreement, has been followed on this property in granting vacations to all classes and crafts of employees without complaint and without violation of any agreement for years on end. It is Carrier's position that there has been no violation of any rule of agreement in the instant case.

As we have stated many times, especially in previous correspondence concerning this conference, the claim made in this case for unnamed claimants is not proper under the explicit provisions of Rule 36(a) of the applicable agreement, which is Article 5(a) of the August 21, 1954 National Agreement. That this is so, see Fourth Division Award 1214, First Division Award 18849, Third Division Awards 6391 and 9250 among others.

Without detracting from or prejudice to that which has been said, supra, based upon the foregoing facts and reasons, Carrier's denial of this case during conference is herewith confirmed.

Yours very truly,

/s/ F. Diegtel"

OPINION OF BOARD: While Carrier denies it violated the Agreement it admits the facts as alleged in paragraphs 1 and 2 of the Claim. For reasons stated in Awards Nos. 14432 and 14433 we find Carrier violated the agreement as alleged. Award No. 14433 involved the same parties as herein.

Carrier argues that because the employees for whom compensation is prayed are not named Article V, 1 (a) of the August 21, 1954 National Agreement compels this Board to dismiss. We find that the identity of the employees can be readily ascertained and this satisfies Article V, 1 (a).

As to part 3 of the Claim, we will deny the prayer for compensation to Claimant Cram because: (1) he was "diverted to work various agency positions" at his own request for his own convenience; and (2) there is no evidence that Cram suffered any loss of wages or incurred expenses. But we note that in acceding to Cram's request Carrier violated the Agreement—and employee by his individual actions may not absolve an employer from its legal obligation to maintain a collective bargaining agreement. For the days Mrs. Eva Huston relieved Agent-Operator Cram at Mt. Jewett, Carrier shall compensate the senior idle and available employee, extra in preference, a day's pay for each of said days.

As to part 4 of the Claim, for the days Mr. W. A. Woodin performed service at NE Tower, Niobe Junction, Carrier shall compensate the senior idle and available employees, extra in preference, a day's pay for each of said days.

Except to the extent prescribed above we will deny parts 3 and 4 of the Claim.

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 Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Paragraphs 1 and 2 of Claim sustained.

Parts 3 and 4 of Claim sustained to the extent set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.