

Award No. 15135
Docket No. TE-11776

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

HUDSON AND MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson and Manhattan Railroad Company that:

1. (a) Carrier violated the agreement between the parties when it failed and refused to properly compensate R. Grabowski for service performed on an assigned rest day on June 19, 1958.

(b) Carrier shall be required to compensate R. Grabowski for 8 hours at the time and one-half rate of the position worked on June 19, 1958.

2. (a) Carrier violated and continues to violate the agreement between the parties when it fails and refuses to properly compensate B. L. Gowan for service performed on his assigned rest days.

(b) Carrier shall be required to compensate B. L. Gowan for 8 hours at the time and one-half rate of position worked on July 10 and 18, 1958 and all subsequent rest days on which he is required to perform service.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

R. Grabowski holds a regular assignment to a position of towerman, under the Telegraphers' agreement, with assigned rest days of Thursday and Friday each week. B. L. Gowan holds a regular assignment as towerman under the Telegraphers' agreement, with assigned rest days of Thursday and Friday, each week. Both claimants had qualified as acting train dispatchers under Article XXI of the current agreement effective June 21, 1953. Article XXI of the agreement reads as follows:

train dispatcher vacancy on his assigned rest days only in the event the train dispatcher vacancy could not otherwise be covered, in which case, he was paid at the time and one-half rate. In other words, when a junior acting train dispatcher not on his rest day was available, the junior acting train dispatcher was used to fill the short train dispatcher vacancy and no claim was made by or in behalf of the senior, acting train dispatcher.

The General Chairman of the organization first lodged a protest with Mr. M. L. Stewart, Superintendent of Transportation, with a view of correcting the violation without the necessity of filing claims. Mr. Stewart left the service of the Carrier without answering this protest. The matter was then handled with his successor, Mr. E. A. Duszak. The Carrier showed no inclination to correct the situation. Claims were filed and handled in the usual manner up to and including the designated officer of the Carrier and have been declined. Correspondence reflecting this handling on the property is attached hereto as ORT Exhibits No. 1 through 27.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Hudson & Manhattan Railroad Company is presently a Debtor in Reorganization under Chapter X of the Bankruptcy Act in the United States District Court for the Southern District of New York, and Herman T. Stichman is Trustee of the Debtor. (Hereafter "Carrier").

The Carrier operates a rapid transit electrified service between the Borough of Manhattan in New York City and points in Jersey City and Hoboken, New Jersey. Its operations are similar to those of the New York City subway system.

In the summer of 1958 claimants Grabowski and Gowan held regular assignments to 5-day positions as Towermen under the agreement with the ORT. Also, on their applications, they had been qualified and acquired seniority rights as Extra Train Dispatchers under the agreement with the American Train Dispatchers Association (ATDA). On July 19, 1958 claimant Grabowski, who was on his rest day as a Towerman, was assigned to work as an Extra Train Dispatcher and was paid a day's pay at Dispatcher's rate under the ATDA agreement. Similarly, claimant Gowan was on his rest days as a Towerman on July 10 and 18, 1958 when he was assigned to work as an Extra Dispatcher and was paid a day's pay on each day at Dispatcher's rate under the ATDA agreement.

Claims were filed by the ORT for the claimants seeking an additional 4 hours' pay (i.e. time and one-half) at Dispatcher's rate for each day.

(Exhibits not reproduced.)

OPINION OF BOARD: In our Award 13009 (Referee West), between the same parties, we dealt with the same issue as is presented here. We see no reason to depart from our conclusions in that case.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1967.