



Award No. 15496
Docket No. TE-14396

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Houston Belt and Terminal Railway, that:

1. Carrier violated Rule 4 (b) and letter of understanding in lieu thereof when, on the 11th day of September, 1962, it permitted and required Telegrapher M. E. Porter, regularly assigned at Tower 117, to fill a vacancy occurring at Tower 81 without respect to office seniority rights existing in Tower 81, Houston, Texas.
2. Carrier violated Article V, 1 (a) of the August 21, 1954 Agreement for failing to disallow claim within sixty days.
3. Carrier shall compensate Telegrapher G. H. Hill eight (8) hours at the pro rata rate for this violative action.

EMPLOYEES' STATEMENT OF FACTS: The Houston Belt and Terminal Railway Company operates terminal facilities providing yard terminal and switching service for a number of participating line haul carriers entering the city of Houston, Texas. The instant dispute concerns the working conditions of a facility operated by employes covered by the Telegraphers' Agreement at Tower 81.

Tower 81 is located on the southern extremities of Houston, Texas. It is an interlocking facility providing round-the-clock service. There are certain rules of the Agreement between the parties delegating certain rights to the employes within each specific office, such as provided in Rule 4, paragraph (b) of the Agreement.

On the date in question, September 11, 1962, a vacancy occurred on the 7:00 A.M. to 3:00 P.M. position in Tower 81. This position was regularly assigned to J. S. McMahon. The only regular assigned employe available in that office was Telegrapher C. A. Box. Telegrapher Box had performed duty on this same position on September 9 and 10, which was within his assign-

Under its provisions, of the employes in that office, under the "National rest law", as shown in the foregoing, Box, and only Box, could have been entitled to work this vacancy September 11.

7. In the event Box could not be consulted to determine whether he desired so to advance to fill this vacancy, or in the event that he, consulted, did not "so desire", the "senior qualified extra employe" available under the terms of a Memorandum of Agreement signed August 29, 1961 (reproduced as Exhibit C) would have stood for the vacancy.

8. But the extra board was exhausted, making it necessary to resort to a Letter of Understanding dated August 17, 1960 (reproduced as Exhibit D). Under its terms, once again, the only "employe in that office" to whom the vacancy would have been offered (the only one "who would have fifteen hours off prior to the starting time of the vacancy") was Box, could not have been Claimant. And, again, if Box could not be located (and he had every right to go in hiding from 3 P. M., his assigned quitting time, September 10 until 3 P. M., his assigned starting time, September 11) or, if located, he chose not to accept the offer, which he was privileged to do, then the senior qualified regularly assigned employe whose name was included on the list of those desiring to protect temporary vacancies on their off days, to the extent that in so doing the Hours of Service Law did not prevent them from protecting their regular assignments at the beginning of their next work week, stood to be used.

Having completed this belated investigation—belated because of the delay in being informed of the claim—Mr. Reese declined it in his letter to Mr. Pratt dated December 6 (Exhibit E), on the twofold basis that a "diligent search" failed to turn up any prior hint of the filing of such a claim and that, since "evidently it was not agreeable with Box" to advance to the vacancy, Porter stood for it.

Then, in a letter dated December 17 (Exhibit F) General Chairman Phillips appealed the claim to Carrier's president and general manager, who, concurring in Mr. Reese's decision, declined the claim in his reply of January 11 (Exhibit G).

He received another letter from Mr. Phillips dated January 16 (Exhibit H), suggesting that claim be discussed in conference and, as confirmed in his letter May 20 (Exhibit I), this was done May 13, with declination repeated.

Additional letters came from Mr. Phillips dated July 4 (Exhibit J), and October 6 (Exhibit K), with a reply to the latter October 7 (Exhibit L), and then carrier was notified, in Mr. Leighty's letter October 10, of the Organization's intention to submit the case ex parte to your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's first defense in this case is that the claim was not timely filed; this defense was raised by Carrier on the property. According to a statement signed by the Claimant, on September 13, 1962, he placed the claim addressed to Carrier's Assistant Trainmaster in the regular company mail, which was then carried in, in the usual course of business, by a signal maintainer on September 17, 1962. There is no statement in the record from the signal maintainer. Thus, there is no proof

that the claim dated September 13 was ever presented to the Carrier. In the face of Carrier's timely denial that it ever received the September 13 claim, the proof offered by Employes that the claim was received by Carrier is inadequate. (See Award 11505.)

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 Claim was not timely presented to Carrier under the terms of the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1967.