Award No. 15593
Docket No. TE-14505

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY
(South Central District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific (Western Lines), that:

1. Carrier violated the Agreement between the parties when it failed and refused to use Telegrapher Evelyn P. Larsen to work on the second shift Telegrapher position at Yermo, California, on September 1, 1962.

2. Because of this violation, Carrier shall compensate Evelyn P. Larsen in the amount of a day's pay of eight (8) hours at the time and one-half rate for September 1, 1962.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective October 1, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

There are three (3) Telegrapher-Clerk positions at Yermo, California, furnishing continuous telegraph and train order service at that station. The first shift assignment is 8:00 A. M. to 4:00 P. M., Monday through Friday, with rest days of Saturday and Sunday; the second shift, 4:00 P. M. to Midnight, Tuesday through Saturday, rest days Sunday and Monday; and, the third shift, Midnight to 8:00 A. M., Saturday through Wednesday, with rest days of Thursday and Friday. Rest day relief is by regular relief employes. The relief employe headquartering at Yermo relieves on the third shift position, Thursday and Friday, the first shift, Saturday and Sunday, and the second shift on Monday. Sunday rest day relief on the second shift at Yermo is protected by the regular relief employe headquartered at Arden, California, working four days at Arden and one day at Yermo (Sunday) each week.

Claimant Evelyn P. Larsen is regularly assigned to the third shift position at Yermo. On August 13, 1962, Miss Larsen stepped up to the first shift position as provided by Rule 36 (b), and was occupying that position at the time this claim arose.

day was a rest day of her regular assignment. Her claim was denied by Carrier. The handling of this claim on the property is indicated by the correspondence between the parties attached hereto as the following exhibits:

Carrier's Exhibits	Description
A	Organization General Chairman's letter dated October 3, 1962, to Carrier's Supervisor of Wage Schedules, initially filing claim of Telegrapher-Clerk Evelyn P. Larsen for payment of eight hours at time and one-half rate on Saturday, September 1, 1962.
B	The Carrier's Supervisor of Wage Schedules' letter dated October 10 to Organization's General Chairman, citing the facts and circumstances in the dispute, and declining the claim.
C	Organization General Chairman's letter dated October 13, notifying Carrier's Supervisor of Wage Schedules that his decision was not acceptable, and that the claim would be appealed.
D	Organization General Chairman's letter dated October 24, appealing the claim to the Carrier's highest designated officer of appeal.
E	Assistant to Vice President's letter of November 20, 1962 to Organization General Chairman confirming conference discussion of the claim and reasons for denial.

(Exhibits not reproduced.)

OPINION OF BOARD: The regularly assigned telegrapher-clerk on the 4:00 P. M. to Midnight shift at Yermo, California, was absent on account of illness on Friday, August 31, 1962 and Saturday, September 1, 1962, thereby creating a temporary vacancy on both days. Carrier filled the temporary position on both dates with a regularly assigned relief telegrapher whose regular assignment consisted of four days' relief service at Arden, California, and one day at Yermo, California, between 4:00 P. M. to Midnight on Sundays. Thus, the regularly assigned relief telegrapher served at Yermo on Friday and Saturday (August 31 and September 1, 1962) filling the temporary vacancy as well as Sunday (September 2, 1962) when he filled the same position as part of his regular relief assignment. Claimant is the regularly assigned third shift Telegrapher-clerk who was temporarily filling the 8:00 A. M. to 4:00 P. M. shift, Monday through Friday. She was unavailable for service on Friday, August 31, 1962 under the Federal Hours of Service Laws, but contends that she had an exclusive right under the Agreement to fill the temporary vacancy on Saturday, September 1, 1962, her scheduled rest day.

The pertinent provisions of the Agreement are as follows:

"RULE 36.

TEMPORARY VACANCIES OR TEMPORARY POSITIONS

(b) Temporary vacancies not bulletined per Sections (a) and (c) of this rule and when the regular assigned relief agent or

relief leverman are not available, may be filled by advancing the regular force in an office or station according to seniority and qualifications if they so desire. . . ."

"RULE 47. EXERCISE OF SENIORITY

(a) Seniority rights may be exercised only in case of vacancies, new positions, reduction in force, or displacements."

These rules indicate the manner in which temporary vacancies may be filled by Carrier. However, it is essential that an eligible employe be available to fill such temporary vacancies.

The thrust of Petitioner's position is that the temporary vacancy at Yermo should be considered on a separate day to day basis and that Claimant was eligible and available to fill the one day vacancy that existed on Saturday, September 1, 1962.

Carrier's position is that the temporary vacancy at Yermo was of two days' duration, and that Claimant has no justifiable Claim to part of it because one shift occurred during her rest day.

We have carefully considered the arguments advanced by the parties as well as the various Awards cited by them in support of their respective positions, and must conclude that this vacancy was an entity for its entire duration which could not be divided into segments as urged by Petitioner. Award 11497.

As Claimant was not available to fill the temporary vacancy when it occurred, we find nothing in the Agreement granting her the right to displace the employe selected by Carrier to fill such temporary vacancy. Accordingly, we must deny 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.

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