

Award No. 15622
Docket No. TE-14468

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. Carrier violated the terms of the parties' Agreement because it failed to assign Extra Operator E. J. Smith to a vacancy existing on the position of Relief Agent-Operator at Griffith, Indiana, to which he was available for assignment on June 9, 10, 11, 12, 14 and 17, 1962, and to which he had entitlement over the regular employees who were used on said dates on their rest days.

2. Carrier shall compensate Mr. E. J. Smith in the amount of a day's pay for each date above specified, at the rate of the position he was entitled to work each such date.

EMPLOYEES' STATEMENT OF FACTS: Agent-Operator R. M. Summers occupied a regular relief position assigned to work at Griffith, Indiana, as follows:

Day	Classification	Trick
Saturday	Agent-Operator	First
Sunday	Agent-Operator	First
Monday	Agent-Operator-Clerk	Second
Tuesday	Agent-Operator-Clerk	Second
Wednesday	(REST DAY)	
Thursday	Operator-Clerk	Third
Friday	(REST DAY)	

Mr. Summers went on vacation commencing Saturday, June 9, to June 21, 1962. This represented ten days' vacation plus rest days. While Mr. Summers was on vacation, Extra Operator E. J. Smith, Jr., was available to cover the

We have no regular vacation relief on the Grand Trunk Western. This work is performed by extra employees. On the above mentioned dates, Extra Operator E. J. Smith was qualified and had not had 40 hours' work in that period and should have been used at Griffith.

Awards 4728, 4815 and 5333 state, 'If there is no regular relief man assigned rest day work must be given to an extra man, if available, and if an extra man is not available, to the occupant of the regular position on an overtime basis.'

We feel that Article 12(b) is for the sole purpose of prohibiting the employee's position being bulletined while he is on vacation. Award 7176 states:

'It is clear that the intent of the cited rule [12(b) Vacation] was to fully protect employees on vacation in that, as to such employees, their rights were to be maintained just as if they were actually working. But the rule itself contemplates that the positions of employees on vacation might be filled. As to employees thus needed, the rule governing temporary vacancies applies. It was never contemplated that positions of employees on vacation could not be filled.'

We cannot accept your declination of this claim, and this is to advise we expect to appeal same to higher tribunals for adjudication.

Yours very truly,

/s/ L. H. Freeman
General Chairman"

Nothing further was heard of from the employees in connection with this claim until August 20, 1963, when carrier received a copy of the employees' August 16, 1963 notice to the National Railroad Adjustment Board, Third Division, advising of their intention to file ex parte submission in connection with the instant dispute. At no time have the employees requested or held conference with the carrier in an attempt to settle this dispute as required by the Railway Labor Act.

Copies of the Telegraphers' Working Agreement, dated November 1, 1955, in effect on this property, are on file with the Third Division.

OPINION OF BOARD: The claim in this case is contested by the Carrier on the grounds that no conference has been held by the parties to consider, and, if possible, decide this dispute in accordance with the requirements of Section 2, Second of the Amended Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board, dated October 10, 1934. This being the case, Carrier contends that this Board does not have jurisdiction in the matter before us.

We agree with Carrier's position that a conference is mandatory in accord with the above-cited Act and Circular and must, therefore, dismiss the claim. (Awards 13959, Dorsey, and 14054, Dorsey)

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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.