

Award No. 15701
Docket No. TE-14195

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

- 1(a) Carrier violated the Agreement between the parties when on December 21 to 28, 1957, it used an employe of another craft to relieve E. E. Miller, Agent-Operator, Carthage, Tennessee, for vacation.
- (b) Carrier shall compensate E. E. Miller, monthly rated employe, for the period December 21 to 28, 1957, at the time and one-half rate in addition to his regular vacation allowance.
- 2(a) Carrier violated the Agreement between the parties when on June 1, to 20, 1959, it used an employe of another craft to relieve F. R. Day, Agent-Operator, Rockwood, Tennessee, for vacation.
- (b) Carrier shall compensate F. R. Day, monthly rated employe, for period June 1 to 20, 1959, at the time and one-half rate in addition to his regular vacation allowance.
- 3(a) Carrier violated the Agreement between the parties when on June 22 to July 4, 1959, it used an employe of another craft to relieve E. E. Miller, Agent-Operator, Carthage, Tennessee, for vacation.
- (b) Carrier shall compensate E. E. Miller, monthly rated employe, for the period June 22 to July 4, 1959, at the time and one-half rate in addition to his regular vacation allowance.
- 4(a) Carrier violated the Agreement between the parties when on July 6 to 25, 1959, it used an employe of another

craft to relieve W. D. Sparks, Agent, Lebanon, Tennessee, for vacation.

- (b) Carrier shall compensate W. D. Sparks, monthly rated employe, for the period July 6 to 25, 1959, at the time and one-half rate in addition to his regular vacation allowance.
- 5(a) Carrier violated the Agreement between the parties when on July 27 to August 14, 1959, it used an employe of another craft to relieve H. L. Wilchester, Agent-Operator, Ashland City, Tennessee, for vacation.
- (b) Carrier shall compensate H. L. Wilchester in the amount of fifteen (15) days' pay at the time and one-half rate in addition to his regular vacation allowance for the period July 27 to August 14, 1959.
- 6(a) Carrier violated the Agreement between the parties when on August 17 to 29, 1959, it used an employe of another craft to relieve C. M. Smith, Agent, Cookeville, Tennessee, for vacation.
- (b) Carrier shall compensate C. M. Smith, monthly rated employe for the period August 17 to 29, 1959, at the time and one-half rate in addition to his regular vacation allowance.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective May 1, 1954, and as otherwise amended. Copies of said Agreement are, under law, assumed to be on file with your Board and are, by this reference, made a part hereof.

The six (6) claims incorporated into this appeal were handled on the property separately. However, since the question at issue, namely "The use of an employe of another craft to perform vacation relief," on the various positions named in the complaint, is the same in all of the claims which have been progressed on the property under identical rules and arguments, the Employes have, in the interest of brevity and to eliminate repetitious handling to the extent possible, incorporated the six (6) claims into this one appeal. This procedure has been approved by your Board in Awards 10619 (LaBelle); 11300 (Moore); 11174 (Dolnick); 4821 (Carter).

The record shows that the six (6) claims incorporated into this appeal were, by agreement, held in abeyance pending a decision of the Third Division, NRAB, in three identical claims docketed as TE-8813, 8814 and 8844. Your Board, with Referee Arthur Stark sitting as a member thereof, adopted Awards 10395, 10396 and 10397 sustaining the position of the Employes which was, to-wit: That the use of an employe of another craft to relieve the various Agents involved in these disputes for their respective vacations constituted a crossing of craft lines not contemplated by the terms of the Vacation Agreement.

Following the handing down of Awards 10395, 10396 and 10397, the General Chairman approached the Carrier for a settlement of the six (6)

R. H. Brent, who had worked as a clerk, but was qualified to fill positions of Agent and Agent-Operator, was used as Agent and/or Agent-Operator for his vacation relief service continuously from June 1, 1959 to and including August 29, 1959.

Mr. Brent had worked as a clerk at the Nashville yard office, from which position he was granted leave for this vacation relief service.

All of this vacation relief service by Mr. Brent was performed under and in accordance with the rules and working conditions of the telegraphers' agreement and at the rate of pay specified in that agreement for the respective positions.

Upon completion of the said vacation relief service on August 29, 1959, Mr. Brent was placed on temporary vacancy in the position of Agent-Operator at Crossville, Tennessee, commencing August 31, 1959, Mr. W. H. Wiggerman, the assigned Agent-Operator there (and General Chairman) having been granted leave of absence effective at the end of his tour of duty on August 28, 1959 account health.

Mr. Brent continued to hold the position at Crossville on a temporary basis and when Mr. Wiggerman returned to service as Agent-Operator at Lebanon, Tennessee, his former position at Crossville was advertised as a permanent vacancy, to which Brent was the senior qualified bidder and was regularly assigned thereto by bulletin on June 23, 1960.

When the Agents and Operators seniority roster was prepared as of January 1, 1960, a check of Brent's service disclosed that he had worked continuously under the telegraphers' agreement from June 1, 1959 to January 1, 1960, having filled vacation absences in positions within the scope of that agreement continuously from June 1 to August 29, 1959, a total of 77 working days, and the temporary vacancy of Agent-Operator at Crossville from August 31, 1959 to the date of the roster. He was, therefore, included on the said roster of January 1, 1960 with seniority date of June 1, 1959, which roster was published, and no protest thereon was received.

In each of Claims Nos. 1 to 6, inclusive, Employees allege violation of the schedule agreement in the filling of the vacation absences referred to, and claim that by reason of such alleged violation the vacationing employe should in each case be allowed pay for the involved period of his vacation at the time and one-half rate, in addition to the regular amount of vacation pay already allowed.

Carrier denied the allegation of violation of the agreement, and held that in any event the vacationing employe is not entitled to any pay for the period of his vacation in addition to the regular vacation pay already allowed in each and every case.

Copy of correspondence relating to the handling of Claim No. 1 on the property is attached hereto designated Carrier's Exhibits A-1 to A-6, inclusive.

Typical of the handling of Claims Nos. 2 to 6 on the property is the correspondence relating to Claim No. 2, copy of which is attached designated Carrier's Exhibits B-1 to B-6, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves six consolidated claims, each seeking recovery because Carrier used an employe of a different craft or class

to relieve a vacationing telegrapher. Bumgarner, a displaced Clerk, served as relief occupant of the position in Claim No. 1. Brent, a Clerk on leave, served as relief occupant under the balance of claims filed and eventually acquired seniority as an Agent. The relief service in question was continuous.

In Award Nos. 10395, 10396 and 10397, we established that use of a Clerk, also qualified as an Agent, for relief of Agents on vacation, constituted crossing craft lines and was violative of the ORT Agreement.

Carrier attempts to distinguish the instant case from the above-mentioned cases on two theories: (1) that the relief occupants in the instant case were either on leave or displaced, and (2) that relief worker Brent was "hired" under Section 12(c) of the National Vacation Agreement, did not ever return to the Clerk position, and eventually obtained seniority under the ORT Agreement.

Based upon the aforementioned precedent, we are unable to distinguish the instant case on Carrier's first contention.

We are not persuaded that Section 12(c) of the National Vacation Agreement was intended by the parties to alter the effectiveness of the Scope Rule set forth in the ORT Agreement. Nor, were we so persuaded in preceding cases above cited.

We are unable to consider Carrier's evidence that Brent obtained seniority under the ORT Agreement, for the reason that such evidence was not introduced on the property. If this evidence were a proper part of the record, this case would be distinguishable **to the extent of the probative value of that fact**. Since it is not, we are compelled to deny Carrier's second contention.

Since Claimants actually took their respective vacations and received their regular vacation allowances, we will allow one-half time additional pay for each claim period.

FINDINGS: The Third Division of the Adjustment Board after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claims sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

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