



Award No. 15796
Docket No. TE-14289

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that:

1. Carrier violated the Agreement between the parties when it failed and refused to allow Emery B. Smith to work on his permanently owned (regularly assigned) position of first shift Train Director at Waltham Tower, Massachusetts on Monday, May 28, 1962.
2. Carrier shall be required to compensate Emery B. Smith in the amount of a day's pay (including gate allowance) of eight (8) hours at the straight time rate for May 28, 1962.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Emery B. Smith is regularly assigned to the first shift Train Director position at Waltham Tower, Massachusetts, with an assignment of 6:00 A. M. to 2:00 P. M., Sunday through Thursday with rest days of Friday and Saturday. The rest day relief work is a part of a regular relief position. Mr. Smith is also a spare Train Dispatcher in the Boston, Massachusetts Trains Dispatcher's Office.

At 6:30 A. M. on Sunday, May 27, 1962, Claimant Smith completed five days of work as a Train Dispatcher and was released from duty as a Train Dispatcher at that time. Mr. Smith then advised the assigning officer of the Carrier that he would return to his position at Waltham Tower on Monday, May 28th. The assigning officer advised Smith that it looked like there would be work for him as a Train Dispatcher on Tuesday, May 29th, on that basis refused to allow Smith to work on his regularly assigned position at Waltham Tower on May 28th. It developed that Smith was needed as a Train Dispatcher on May 29th. However, as stated above, the May 29th assignment as Train Dispatcher was not definite on May 27th, when Claimant Smith notified the assigning officer of the Carrier that he would return to his position at Waltham Tower on May 28th.

District Chairman Smith (who is also the Claimant) presented claim to the Superintendent, claiming the day's pay applicable to his position at Waltham Tower for May 28th.

The claim here involved was filed and handled in the usual manner up to and including the highest officer of the Carrier and has been denied. Handling on the property is reflected in ORT Exhibits 1 through 6, attached hereto and made a part hereof.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant Smith is regularly assigned as first-trick Tower Director at Waltham Tower, Massachusetts, a position covered by the scope of the agreement with Petitioner. It is on file with the Board and is by reference made part of the record. The claimant is also a spare train dispatcher, assignments in that class being covered by the scope of the agreement with American Train Dispatchers Association. That agreement is also on file and is by reference also made part of the record. Each agreement is controlling while the claimant works in each of the respective classes.

In accordance with his train dispatcher's seniority, Claimant Smith was called for an assignment in the dispatcher's class commencing Friday, May 18, 1962. He continued to work in that class on various positions continuously through June 5, 1962.

At the close of his work as dispatcher on Saturday, May 26, 1962, it was known that a trick dispatcher was to be out on vacation on Tuesday, May 29, 1962, and accordingly claimant was assigned to it in accord with his dispatcher's seniority.

Article 4(a) of the Dispatchers' Agreement requires that extra dispatchers having worked five days in that class will take two days of rest. Since claimant had performed such service he was assigned two rest days, Sunday and Monday, May 27 and 28, with an assignment as dispatcher commencing Tuesday, May 29, 1962.

The claimant, however, demanded the right to revert to his regular position at a Tower Director for one day only, Monday, May 28, 1962. This claim was made even though the claimant knew he was scheduled to continue in the dispatcher's class after completion of the rest days.

Claim was declined for the reason that claimant had not been released from work in the dispatcher's class. Consistent with the rest day rule applicable, and being able to hold a position in the higher class, he was not entitled to demand that he be allowed to temporarily revert to the lower class.

OPINION OF BOARD: Claimant, a Tower Director under the Telegraphers' agreement, was also a spare train dispatcher. When he finished five days of work on a dispatcher position on May 26, he was informed that he would work again as a dispatcher beginning on May 29. He demanded the right to revert to his regular Tower Director position for May 28. Carrier refused to permit this.

Employees argue that Claimant had completed his assignment as a dispatcher at the end of work on May 26, and the dispatcher assignment starting

on May 29 was a new assignment; that in the interim (May 27 and May 28) he was not covered by the Dispatcher's Agreement, but by the Telegraphers' Agreement. The record shows in the exchange of correspondence on the property that Carrier established without successful rebuttal by Employees that on May 26 Claimant was not released from the dispatcher assignment, but was scheduled to continue to work the assignment on May 29 after being off work for two days which were the rest days of the assignment under the terms of the Dispatchers' Agreement.

The issue is whether an employee who suspends from his regular assignment under the Telegraphers' Agreement to work a spare assignment under the Dispatcher's Agreement has a demand right to return to his regular Telegrapher assignment under the Telegraphers' Agreement on days which are the rest days of his assignment under the Dispatchers' Agreement. We have dealt with this question before. Our decision regarding Claim number three in Award 13009 (West) deals with it directly; we see no reason to depart from its reasoning as applied to this case. We therefore arrive at the same conclusion in denying the claim here.

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 jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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