

Award No. 15975
Docket No. TE-14781

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 & Maine Railroad, that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when on April 16, 1963, it failed and refused to cover a position of leverman (second trick) at Tower "A," Boston, Massachusetts.

2. In consequence thereof, Carrier shall compensate A. L. Gilman, the senior, available, qualified employe in the amount of eight hours at time and one-half rate for April 16, 1963.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when on May 16, 1963, it failed and refused to cover a position of leverman (second trick) at Tower "A," Boston, Massachusetts.

2. In consequence thereof, Carrier shall compensate A. L. Gilman, the senior, available, qualified employe in the amount of eight hours at time and one-half rate for May 16, 1963.

EMPLOYEES' STATEMENT OF FACTS: Claim Nos. 1 and 2 were handled separately on the property, but have been combined into this single submission for the reason that the facts, circumstances, location, rules and Claimant are the same in each claim case. Stated differently, the claim cause is the same in each case, but Claim No. 2 was a later repetition of the incident involved in Claim No. 1.

The claim arose over work assignments at Tower A, located at Boston, Massachusetts. A chart showing the staff of employes and positions maintained at Tower A, who are covered by the parties' Agreement, is shown on the next page following, which chart also shows other relevant matter in connection with the positions thereat.

No. 1; and ORT Exhibits 1 through 8, Claim No. 2. As evidenced in a review of the documentation aforesaid, this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board but failed of settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: There is in effect an agreement governing rates of pay and working conditions between the Order of Railroad Telegraphers and the Boston and Maine Railroad dated August 1, 1950, copies of which are on file with your board.

At the time of claim, employes on the second trick in the railroad's Tower A at Boston, consisted of three Levermen and one Train Director.

Both claims are identical. That is, on April 16, 1963, and on May 16, 1963, on the second shift (3 P.M.-11 P.M.) a leverman marked off sick on short notice.

The railroad, being the judge of forces, having full knowledge of its rights under the agreement, decided that the position could adequately be handled by the remaining three Levermen. Thus, the job was blanked instead of doubling a regular man (no spares available).

As there is no rule in the agreement prohibiting the blanking of a position, where such blanking is not due to an affirmative act of the Carrier, but because of the employe's failure to report for duty, the claims were declined.

OPINION OF BOARD: Carrier maintained a Tower Director and three Levermen on the second shift at Tower A located at Boston, Massachusetts. On April 16, 1963, an extra employe, who was assigned to work the position of Leverman in place of the regular occupant, called in sick. Carrier blanked the position. On May 16, 1963, one of the Levermen reported ill and Carrier blanked the position that day, too. There were no spare employes available.

Mr. A. L. Gilman, claims that as the senior qualified available employe, he should have been called to fill the vacancy on the second shift after completing his own tour of duty as Leverman on the first shift in the Tower on the date in question. He maintains that Carrier violated Articles 3 (a), 9, and 35 (a) of the Agreement. Petitioner also supports his position with a letter dated June 8, 1956 concerning a settlement of a prior claim at Tower A in which the Manager of Labor Relations stated:

"As previously agreed, in Tower A when a vacancy occurs on a particular trick, the senior man will be used whether it be a man on his rest day, or whether it be a man from another trick on levermen's vacancies."

Carrier's denial emphasizes that there is no Rule in the Agreement that prohibits the blanking of the position of an employe who fails to report for duty because of illness.

The Rules cited by petitioner do not support the position that Carrier was obligated to fill the Leverman's position on the two days when the employes reported absence because of illness. The question then to consider is whether

the letter of June 8, 1956, is controlling and requires Carrier to fill a vacancy under the circumstances in this dispute. This letter designates the seniority procedure to be followed when a vacancy is to be filled. It does not state or imply that Carrier is prohibited from blanking a position when an employee reports ill. A considerable number of Awards including: Nos. 10938, 12358, 13175 and 14699 have held that in the absence of a specific prohibition, Carrier has the right to blank a position. For this reason we hold the Agreement was not violated.

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 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 30th day of November 1967.