

Award No. 16110
Docket No. TE-15198

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that Carrier violated the Telegraphers' Agreement when it permitted regular Operator E. Holloway, second trick EYE, who was being used in the capacity of an extra operator, to cover the third trick position at EYE on December 27, 1962, with the regular third trick employe available on his relief day.

Claim is hereby made the regular third trick operator P. A. Knoll be allowed eight hours' pay pro rata for December 27, 1962, account not called and used to fill this assignment.

Violation of Regulations 5-C-1 and 5-E-1.

EMPLOYEES' STATEMENT OF FACTS: Claimant held the regular Group 2 position (which was not designated by an asterisk (*)) as relief block operator at EYE Block Station, Corry, Pennsylvania. The position worked as follows:

First shift - Saturday and Sunday

Second shift - Monday and Tuesday

Third shift - Wednesday

Rest days - Thursday and Friday

Claimant was available to work the third shift position at EYE Block Station on Thursday, December 27, 1962, the first of his two rest days during that week.

E. Holloway was regularly assigned to the position of second shift block operator at EYE Block Station, with rest days of Monday and Tuesday. However, upon her request, she was permitted by the Carrier to fill a temporary vacancy from December 11 to December 31, 1962, on position of relief block operator which worked as follows:

The claim was handled further in accordance with the procedure outlined in the Rules Agreement to the Manager, Labor Relations, and the General Chairman. As a part of this handling the parties prepared a Joint Submission, a copy of which is attached as Exhibit A.

The General Chairman presented the claim to the Manager, Labor Relations, at a meeting on October 3, 1963. The Manager denied it in his letter dated October 31st, a copy of which is attached as Exhibit B.

Under date of December 26, 1963, the General Chairman wrote to the Manager, Labor Relations, and rejected the denial. In his letter he restated his position and asked that the Manager further review the claim and advise if it would be allowed. A copy of this letter is attached as Exhibit C.

The Manager rejected the General Chairman's further presentation of the claim, and reaffirmed his previous denial as follows in his letter of January 7, 1964:

"The facts in System Docket No. 1352, and our reasons for denial thereof, were set forth in detail in our letter to you dated October 31, 1963.

We have given consideration to the further arguments outlined in your letter referred to above.

We have also reviewed the National Railroad Adjustment Board decisions cited by you, some of which we mentioned in our letter of denial. The facts which resulted in those awards are not parallel to the instant case, and their disposition in favor of the employees involved lend no support to your contention that the claim in System Docket No. 1352 has merit.

We can find no basis upon which to reverse our decision herein and our denial outlined in our letter to you under date of October 31, 1963, is, therefore, reaffirmed."

Therefore, so far as the Carrier is able to anticipate the basis for this claim, the questions to be decided by your Honorable Board are whether the use of Block Operator Holloway on the EYE-ELM relief schedule, which she requested, violated Regulations 5-C-1 and 5-E-1, and whether the Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant in this case held a regular position as relief block operator EYE Block Station, Corry, Pennsylvania, and was assigned to work as follows:

1st trick - Saturday and Sunday

2nd trick - Monday and Tuesday

3rd trick - Wednesday

Rest days - Thursday and Friday.

Miss Holloway held the regular position as block operator, EYE Block Station, second trick, with rest days Monday and Tuesday.

Friebourn held a regular position as relief block operator with a schedule as follows:

1st trick - ELM - Sunday and Monday
2nd trick - ELM - Tuesday and Wednesday
3rd trick - EYE - Thursday
Rest days - Friday and Saturday.

On Tuesday, December 11, 1962, Friebourn started his vacation and continued thereon until December 31, 1962, inclusive. On December 5, 1962, block operator Holloway made a written application for permission to fill the vacancy of relief operator Friebourn during the period of the latter's vacation. The request was granted, and operator Holloway filled the vacancy during the vacation period.

A claim was submitted for Thursday, December 27, 1962, because operator Holloway worked as third trick Block Operator at EYE Block Station as one of the regularly assigned work days of Friebourn, whose vacation period she was, of course, filling.

Regulation 5-C-1 provides as follows:

"(a) When a temporary vacancy of less than thirty (30) days in a Group 2 position not designated by an asterisk (*), occurs in an office where two or more shifts are worked, such vacancy may be filled by the senior qualified Group 2 employee who makes application and is regularly assigned to such office, if permission is granted by a proper officer of the company. Other Group 2 employees regularly assigned to such office may then advance in the order of their seniority to Group 2 positions made temporarily vacant by such change, and the last Group 2 position so vacated shall be filled by an extra man. For the purpose of applying this paragraph (a), regular Group 2 employees whose schedules include relief work in an office shall be considered as employees regularly assigned to such office.

(b) It is understood that the temporary change referred to in paragraph (a) of this regulation (5-C-1) shall not cause additional expense to the Company or operate to the detriment of the service."

The Employees' position is that the above cited regulation permits a regular relief employee to "move up" in any office where he performs regular relief service, but does not permit a regular non-relief employee to "move up" to any position other than one which is assigned within the same office.

Carrier's position, on the other hand, is that the cited rule does not allow a "move up" to any position that encompasses work part of the time in one physical location, and part of the time in another, which was done in this case.

As we read and interpret the rule, there is no question that the vacancy was of less than 30 days' duration, was in a Group 2 position not designated by an asterisk, and occurred in an office where two or more shifts were worked. That particular portion of the rule has been satisfied by the circumstances of the instant case. Such vacancy additionally must be filled by the senior qualified Group 2 employe who makes application and is regularly assigned to such office. (Emphasis ours.)

Insofar as Claimant is concerned, he made no application for the day in question; nor was any complaint made concerning other days during the period involved. As to Claimant, we conclude that in this matter, he does not have a justiciable case or controversy.

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 1st day of March 1968.