



Award No. 16123
Docket No. TE-15343

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

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 on the dates shown below it improperly diverted R. G. Poulton from his regular rest day relief position No. 10 to the position of agent and ticket agent at White River Junction, Vermont, when no emergency existed and without proper compensation for such service.

2. In consequence thereof, Carrier shall now compensate R. G. Poulton, in addition to that already received, as follows:

Tuesday, August 27, 1963 - Eight straight time hours at \$2.669 per hour.

Wednesday, August 28, 1963 - Eight straight time hours at \$2.669 per hour.

Thursday, August 29, 1963 - Eight straight time hours at \$2.585 per hour.

Friday, August 30, 1963 - Four straight time hours at \$2.693 per hour.

Saturday, August 31, 1963 - Four straight time hours at \$2.693 per hour.

Tuesday, September 3, 1963 - Eight straight time hours at \$2.669 per hour.

Wednesday, September 4, 1963 - Eight straight time hours at \$2.669 per hour.

Thursday, September 5, 1963 - Eight straight time hours at \$2.585 per hour.

Friday, September 6, 1963 - Four straight time hours at
\$2.693 per hour.

Saturday, September 7, 1963 - Four straight time hours at
\$2.693 per hour.

EMPLOYEES' STATEMENT OF FACTS: Correspondence exchanged between the parties in the property handling of this dispute is reproduced on the pages next following. Said documentation will readily disclose the facts of the case, the respective positions of the parties and arguments in support thereof.

[Letterhead of]

"THE ORDER OF RAILROAD TELEGRAPHERS

October 25, 1963

Mr. I. W. Clifford, Superintendent
Fitchburg Division
Greenfield, Massachusetts

Dear Sir:

Claim is presented as follows:

1. Carrier violated the Agreement between the parties when, on the dates shown below, it improperly diverted R. G. Poulton from his regular rest day relief position No. 10 to the position of Agent and Ticket Agent at White River Junction, Vermont, when no emergency existed and without proper compensation for such service.

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\$2.585 per hour.

The foregoing documentation will disclose that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board, but failed of settlement.

CARRIER'S STATEMENT OF FACTS: The Agent-Ticket Agent at White River Junction, Vermont, Mr. J. McAlea, was scheduled to take ten (10) days' vacation following his Sunday and Monday rest days, August 25 and 26, 1963. Actually, he commenced his vacation on August 27th and continued through September 7, 1963.

As there was no available relief employe to cover Mr. McAlea's position during his vacation, the position was offered to the senior qualified employe who had expressed an interest in covering this particular assignment. W. L. Roberts, the agent at North Adams, Massachusetts, accepted the vacation relief assignment in place of Mr. McAlea, and Mr. J. F. Girouard, who was working as an operator at Springfield, Massachusetts, accepted an offer to cover Mr. Roberts' position at North Adams.

Unfortunately, on Sunday, August 25th, Mr. Girouard was suddenly hospitalized and was thereby prevented from covering Mr. Roberts' position at North Adams, and it became necessary to retain Mr. Roberts on his regular position. This left vacant Mr. McAlea's position at White River Junction.

Attempts were made to contact Mr. McAlea with the intent of deferring his vacation, but he could not be reached. In order to cover the assignment, the claimant, who owned a regular relief position (on two of which days he filled Mr. McAlea's position), was assigned to cover the vacation period.

OPINION OF BOARD: Due to an employe's illness on Sunday, August 25, 1963, the vacation replacement scheduled for Agent and Ticket Agent J. McAlea at White River Junction, Vermont, was unable to leave his regular assignment. Mr. McAlea was to start his 10-day vacation on Tuesday, August 27, after his Sunday and Monday rest days.

Carrier alleged that when it learned of the problem on Sunday, it was unable to reach Mr. McAlea and thus could not direct him to postpone his vacation. It therefore diverted Claimant, who occupied a regular rest day relief position, to Mr. McAlea's position.

The Agreement provides:

"ARTICLE 15. EMERGENCY SERVICE

A regularly assigned employe will not be required to perform service on other than his position except in an emergency."

**"ARTICLE 9.
SUSPENSION OF WORK**

Employes will not be required to suspend work during regular working hours or to absorb overtime."

If a bona fide emergency existed because diligent efforts to reach Mr. McAlea by Monday were unavailing, the diversion of Claimant was proper under Article 15. Otherwise, the diversion was improper, and Claimant is entitled to pro-rata pay for his regular position as well as pay for the position to which he was diverted.

With its ex parte submission Carrier submitted a document to the Board dated April 14, 1964, which had not been disclosed in discussions on the property. It has long been held by this Division that evidence not produced on the property cannot be considered by the Board. (The document described the method by which Carrier sought to reach Mr. McAlea.) Therefore, the only indication of Carrier's efforts is found in such general assertions as "On Sunday, August 25, Chief Dispatcher Dufraine attempted to notify McAlea to work his vacation, but McAlea could not be located." (Carrier's letter to the Organization, November 11, 1963.)

However, on February 10, 1964, the Organization, quoting Mr. McAlea's letter of February 21, 1964, advised Carrier that Mr. McAlea had been at home during his vacation, except for daily trips. Carrier made no reply to this statement.

A perfunctory effort to reach an employe does not establish the existence of an emergency when he is not reached. Carrier has not submitted evidence concerning, for example, the time of day it phoned him. An employe on his rest day is more likely to be found at home in the evening or at night, but the Board is given no clue to when Carrier called.

It is also clear that only on Sunday was there any attempt to reach Mr. McAlea. But there was no emergency on Sunday, when Claimant was diverted, since Claimant filled Mr. McAlea's position on both Sunday and Monday as part of his regular relief assignment. Claimant was available to Carrier and could have been notified of his diversion on Monday, as well, if Carrier had used that day also to try to locate Mr. McAlea.

Claimant is not required to prove that an emergency did not exist. The burden is on Carrier to prove that there was an emergency, because it had made every reasonable, diligent attempt to reach Mr. McAlea by Monday, and could not. Carrier has not sustained its burden, according to the evidence.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1968.

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