



Award No. 16296
Docket No. TE-15083

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

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 Relief Agent V. J. Leffler was assigned to work two positions daily from October 30, 1961 to November 9, 1961. The two positions unilaterally consolidated were Arcade, New York and Machias, New York.

Claim is hereby made that Relief Agent V. J. Leffler be paid eight (8) hours' pay pro rata for each position daily at the agent's rate for Arcade, New York and the agent's rate for Machias, New York from October 30, 1961 to November 9, 1961, inclusive, Violation of Regulations 3-C-1, 4-A-1(a), 4-F-1(c), and 5-A-1.

EMPLOYES' STATEMENT OF FACTS: The facts in this dispute are fairly revealed by the following record of property handling, commencing with the lodging of the claim by the District Chairman of the Organization:

"Emporium, Pennsylvania
December 17, 1961

Mr. P. S. Keegan
Superintendent of Stations
Buffalo, New York

Dear Mr. Keegan:

This concerns your letter of November 21, 1961, whereby you agreed to pay sub-agent C. F. Dollinger the difference in rate of pay between clerical assignment at St. Marys and Warren, Pennsylvania, and the Arcade (N. Y.) agent for a period of 9 days, October 10, 1961 to November 9, 1961 inclusive. This claim was account of unilateral consolidation of agencies of Arcade, New York, and Machias, New York, using relief agent V. J. Leffler to work both positions.

The first part of this claim is satisfied by payment to Dollinger; however, the second part of this has not been satisfied. The fact still remains that agent V. J. Leffler was placed on both positions and did a

work performance by Claimant Relief Agent V. J. Leffler at Arcade and Machias, New York, on the dates involved was in violation of any provisions of the applicable Rules Agreement or of the National Vacation Agreement, and whether the Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns the Carrier's action of providing one relief employe to perform the work of two separate agency positions while their incumbents were simultaneously on vacation.

The Employes contended that two relief employes should have been provided, one for each of the two positions, and filed claim accordingly.

The claim requested that one of two named substitute agents, or an idle agent or substitute agent be paid a day's pay, or if none of these were available a substitute agent who was otherwise employed should be paid the difference between what he did earn and what he would have earned if he had been used to provide relief for one of the vacationing agents. The letter also contained an alternative claim as follows:

"... if none of the above claimants are found, claim is also made for relief agent V. J. Leffler, to be paid for each position from October 30, 1961, until violation is corrected and position properly filled, for working two (2) separate agencies [sic] under the Telegraphers' Agreement daily."

Carrier responded to the claim by allowing substitute agent Dollinger, one of those named, the difference in pay between the clerical position he was working and that of the Arcade Agent for the period involved, and notified the District Chairman accordingly.

The District Chairman acknowledged that this response satisfied the "first part" of the claim, but contended that Leffler's claim, which he referred to as the "second part" of the claim, was not satisfied and still remained in force. He then rephrased this portion of the claim in the form appealed to this Board.

The District Chairman was plainly mistaken about the effect of his language. He made a claim for any one of several people, and then he said that if none of these people could be found Leffler should be paid. This clearly was an alternative claim, to become effective only if the primary claimants could not be ascertained.

Obviously an alternative claim becomes pertinent only when the primary claim is not met. Here, the Carrier met the primary claim thereby rendering the alternative claim moot.

For these reasons the claim must be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim is moot.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.