Award No. 16298
Docket No. TE-15196

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Richmond, Fredericksburg & Potomac Railroad, that:

1. Carrier violated the Scope Rule and other rules of the Agreement between the parties when it improperly relieved T. L. Gilman, regularly assigned Agent-Telegrapher, Ashland, Virginia, for vacation September 9 through 13 and October 28 through November 1, 1963, by an employe not covered by the Agreement.

2. Carrier because of the aforesaid violation, shall now be required to compensate T. L. Gilman, for eight (8) hours at the rate of time and one-half, for each of the aforesaid dates. Total amount due, $323.54.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective April 10, 1953, as amended and supplemented is available to your Board and by this reference is made a part hereof.

Ashland, Virginia, is a station on this Carrier's lines. The force at Ashland consists of two employes, one covered by the Telegraphers' Agreement and one covered by the Clerk's Agreement. The position of Agent-Telegrapher is assigned from 8:00 A. M. to 5:00 P. M. (one hour meal period); the clerical position is also assigned 8:00 A. M. to 5:00 P. M. (one hour meal period); both positions have a work week beginning on Monday, assigned rest days of Saturday and Sunday. Normally, neither position works on rest days.

Claimant Gilman had qualified for fifteen (15) days vacation with pay in the calendar year of 1963 under the provisions of Article IV, Section 1(c) of the August 19, 1960 Agreement, which reads:

"Effective with the calendar year 1961, an annual vacation of fifteen (15) calendar work days with pay will be granted to each employe covered by the Agreement who renders compensated service on not less than one hundred (100) days during the preceding cal-

or description in the agreement or in the record of the duties of an Agent-Operator. It is admitted that he is the Carrier's representative at the station and that he is primarily responsible to the Carrier. It is further admitted that the clerks sign his name to bills of lading. This authority comes from the Agent-Operator. While he may also sign bills of lading and do other clerical work, the Agent-Operator primarily supervises the clerks at the station and acts for and on behalf of the Carrier in all transactions within the scope of his and the clerks' duties. From the entire record, we are compelled to conclude that some, if not all of the duties of the Agent-Operator were performed at the Fostoria station on February 26 and 27, 1957. The clerks did not sign their names to the bills of lading, but Mr. Williams' name, who was not present and could not exercise supervision as to the correctness of these transactions. If the Carrier has the right to defer the work of a supervisory employe for any reasons whatsoever, why have one? Obviously, the Agent-Operator is there to see that all the work which needs to be done is done and that it is performed in the manner prescribed by the Carrier.'

We submit that since there was no qualified employe covered by the Telegraphers' Agreement to relieve the Claimant for his vacation, he should have been permitted to work his position during his vacation period, and compensated therefor in accordance with the provisions of the agreement.

Please be advised that your decision is unsatisfactory to my Committee, and the matter will be given further handling."

This claim has been handled in the usual manner on the property, up to and including the Chief Appeals Officer, without adjustment. The Carrier will show there was no violation of the Agreement and the claim should be accordingly denied.

OPINION OF BOARD: Claimant Gilman is the regularly assigned Agent-Telegrapher at Ashland, Virginia, where he and one employe covered by the Clerks' Agreement constitute the entire station force.

By agreement Mr. Gilman took his vacation for the year 1963 in two parts: ten days September 2 to 13, and five days October 28 to November 1. He was properly relieved for the first five days of the first part of his vacation by an extra telegrapher. However, during the remaining five days of that period and the five days of the second period, he was not relieved by an employe subject to the Telegraphers' Agreement. But the station remained open for business and the clerk worked during these two five-day periods.

The Employes contend that the clerk was relieving the Claimant for these parts of his vacation, and that his use for this purpose constituted the crossing of craft lines in providing vacation relief and was thus in violation of the Vacation Agreement. Carrier contends that the agent-telegrapher was not relieved by the clerk or anyone else, but that his position was blanked for the two periods and that the clerk merely performed the same duties he ordinarily performed.

Carrier challenged the Employes, during handling on the property, to show by proper evidence that the Claimant was in fact relieved by the clerk, conceding that if such proof could be shown the claim would have merit. The Employes did not respond.

There are numerous awards which support a contention that craft lines may not properly be crossed in affording vacation relief: Awards 5657, 5917, 9813, 10120, 10242, 10395, 10396, 10397, 14260, 14432, 14433, 14434, 14435, 15701, for example. We have no quarrel with such awards, and reaffirm the principle for which they stand.

On the other hand, there are a number of awards which clearly hold that the burden of proof in such cases lies with the Employes: Awards 8135, 10946, 14821, 14822, 14823, 15081, 15217, for example.

In our opinion, failure of the Employes to respond to the Carrier's insistence that they adduce proof of their allegation that the Claimant Gilman was relieved by the clerk brings this case squarely within the principle for which the latter cited awards stand.

Accordingly the claim must be denied for lack of proof.

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 shown to have been violated.

AWARD

Claim denied.

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.

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