



Award No. 16481
Docket No. TE-15129

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated the Agreement between the parties hereto when and because it failed to use Samuel Germain, regular occupant of the second trick Niagara Junction towerman-telegrapher position, to perform service required on his position Monday, March 4, 1963.

2. Carrier shall compensate Samuel Germain for eight hours at time and one-half the hourly rate of the second trick Niagara Junction towerman-telegrapher position for March 4, 1963.

EMPLOYES' STATEMENT OF FACTS: The facts in this case are relatively clear, and undisputed.

At Niagara Junction, New York, there is one telegraph service employee engaged on each shift, first, second and third, with classification towerman-telegrapher. Each is a seven-day position. All rest days are normally covered by regular relief positions.

Samuel Germain, Claimant, is the regular occupant of the second shift position with assigned hours of 3:59 P. M. to 11:59 P. M. He is assigned to work Wednesday through Sunday, with Monday and Tuesday rest days. The hourly rate of said position is \$2.6918. The Monday and Tuesday rest days of Mr. Germain's position are part of a regular relief position, held by Mr. Lindhurst.

On Monday, March 4, 1963, Mr. Lindhurst was not available to cover his assignment in relieving Mr. Germain on his rest day. Mr. Germain was ready, willing and available for assignment to work his position on his rest day. Instead of assigning Mr. Germain, Carrier assigned Mr. K. Frayne, an extra employee who was on the earned rest day of the assignment he then held, for which rest day service he was paid eight hours at time and one-half rate.

Claim was filed in favor of Mr. Germain in the premise that he was entitled to work his position on the rest day thereof and payment request was therein made that he be compensated for the service he was entitled to work at the rate prescribed in the Agreement.

1. Carrier violated the agreement between the parties hereto when and because it failed to use Samuel Germain, regular occupant of the 2nd trick Niagara Junction towerman-telegrapher position Monday, March 4, 1963.
2. Carrier shall compensate Samuel Germain for 8 hours at time and one-half the hourly rate of the 2nd trick Niagara Junction towerman-telegrapher position for March 4, 1963.'

During our discussion, I pointed out to you the fact that the current Telegrapher Agreements on this property do not provide that temporary vacancies be filled in the manner stated by you in your letter. Under the rules on this property, the extra list telegrapher who filled the temporary vacancy was properly used. Rules 7, 21 and 22 are controlling.

As to the Third Division Awards referred to in your letter dated August 2, 1963, all deal with rules and practices on other properties which are dissimilar to the rules and practices in effect on this railroad and have no precedent setting value in this case. Please refer to Award No. 10295.

As the claim made in this case is unsupported by the rules or awards mentioned, it is without merit and is denied.

Yours very truly,

/s/ P. N. Mansfield
P. N. Mansfield
Chief of Personnel"

OPINION OF BOARD: The material facts are not in dispute in this case..

The Claimant is the regular occupant of the second shift position at Niagara Junction, New York. His assigned hours are from 3:59 P.M. to 11:59 P.M. and his assigned work days are Wednesday through Sunday with rest days of Monday and Tuesday. The Monday and Tuesday rest days of the Claimant are a part of the regular relief position held by telegrapher Lindhurst.

On Monday, March 4th, 1963, telegrapher Lindhurst was not available to work the second trick or shift position at Niagara Junction in relief of the Claimant. The Carrier used an Extra employe named Frayne to perform the rest day relief service on Monday, March 4, 1963.

The Carrier does not deny that Extra employe Frayne had worked all five work days immediately preceding March 4, 1963, on a second trick position at Manchester, which position also had assigned rest days of Monday and Tuesday.

The Employes contend that the Claimant was ready, willing and available to work his position on his rest day. There is nothing in the record on behalf of the Carrier to refute this contention.

The Employees further contend that Frayne, having worked all five days of the same work week, had earned its rest days in the same manner that the regular employee whose place he was taking would have done and therefore, Frayne was on a rest day on March 4th, which day was attached to the position at Manchester. That being the case, the Claimant in this dispute, who was on his rest day, had a right to the work at Niagara Junction superior to any right of the extra employee, Frayne.

The Carrier contends that Frayne, having completed his assignment at Manchester on Sunday, March 3rd, 1963, he immediately reverted to the extra list, and for that reason he was available to substitute for the absent relief employe Lindhurst at Niagara Junction.

Under date of June 30, 1950, the parties to this dispute entered into an Agreement in connection with the establishment of a Forty-Hour Week. The provisions of that agreement that are applicable to the issue before us, read as follows:

**"RULE 7. REST DAYS RELIEF ASSIGNMENTS
AND HOLIDAY SERVICE**

Changed to read as follows:

**SECTION 1. THE FORTY-HOUR WEEK - ESTABLISHMENT
OF SHORTER WORK WEEK**

* * * * *

(h) Rest Days of Extra or Furloughed Employees.

To the extent extra or furloughed men may be utilized under applicable agreements or practices, their days off need not be consecutive; however, if they take the assignment of a regular employee they will have as their days off the days off of that assignment.

* * * * *

(n) Work on Unassigned Days.

Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee."

The question that presents itself is whether or not the extra employee Frayne was available on March 4th, 1963, within the meaning of the provisions of the rules above cited, to be used to take the place of Lindhurst.

This Board has held on numerous occasions that an extra employee who takes the place of an absent employee assumes all of the conditions of the position he is filling including rest days; and that when he has worked all five work days of such assignment he is entitled to and/or earned the rest days attached to that assignment. He must be treated the same as any other employee on a rest day.

In Award 6970 (Carter) we said:

"This case involves a seven day position. The 40 Hour Work Week Agreement requires that extra employes be given two rest days in each work week the same as regularly assigned employes. * * * The rule makes it clear that the 40 hour work week applies to extra employes. . . . In the present case the claimant was being used in the place of a regularly assigned employee and assumes the conditions of the regular position, including the work week and the rest days thereof. . . . It seems clear therefore that an extra employee who works all five days of the work week of a regular assigned employee is entitled to the two rest days incidental to that work week, * * * In other words, where an extra employee has worked the five days of his work week, he is required to take the two rest days the same as a regularly assigned employee, . . ."

The contention of the Carrier that Frayne completed his assignment at Manchester on Sunday, March 3rd, and thus was available to substitute for Lindhurst at Niagara Junction on March 4th, 1963, is without merit and cannot be sustained. The facts in this case conclusively show that Frayne did not complete his assignment at Manchester until Tuesday, March 5, 1963, and thus was not available on Monday, March 4, 1963, to substitute for Lindhurst. Under the provisions of Rule 7-Section 1-Paragraph (n), of the Agreement, the Claimant was entitled to the assignment, and should have been used.

The claim is presented for compensation at the rate of time and one-half.

Carrier contends that, in the event of a sustaining award, the Claimant is entitled to no more than payment at the pro rata rate; that the Claimant would be entitled to the rate of time and one-half only for work performed and since the Claimant was not called and therefore did not work he should not be compensated at time and one-half. Claimant did not work for the simple reason he was not called by the Carrier.

Both the Claimant and the Carrier have submitted numerous Awards to sustain their irrespective positions.

The Carrier having violated the Agreement between the parties, the Claimant has sustained damage.

The law of Damages for a breach of a contract is just compensation for the loss which necessarily flows from the breach. Its purpose is to place the injured party in the position the party would have been had the contract been fully performed. We follow that principle.

The damages sought by the Claimant are limited to compensatory damages directly arising out of the Carrier's violation of the Agreement, which would compensate the Claimant by making him whole for work he otherwise would have performed and the wages he would have earned had he been called upon by the Carrier to perform the work in question. In this case that rate would be at time and one-half. We will sustain the claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.