

Award No. 16497
Docket No. TE-15678

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Milwaukee, St. Paul & Pacific Railroad, that:

1. Carrier violated the provisions of the Agreement when it required Agent-Telegrapher C. M. Wolff to perform relief work at Glencoe, Minnesota, June 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1964, relieving Agent W. A. Witte for his vacation.

2. Carrier shall now compensate C. M. Wolff, eight hours each day at the straight time rate for the above named dates at \$2.5528 per hour, due to having been required to suspend work on his regular assignment at Brownton, Minnesota, in addition to compensation paid him for working at Glencoe, Minnesota.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. C. M. Wolff is regularly assigned to the Agent-Telegrapher position at Brownton, Minnesota, with assigned hours of 6:45 A. M. to 3:45 P. M., Monday through Friday, rest days Saturday and Sunday.

There was no extra employe available to perform work at Glencoe on June 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1964, while regular incumbent was on vacation. Claimant was instructed by the Carrier to perform the necessary work at Glencoe each day from 7:45 A. M. to 3:45 P. M. and to work at Brownton from 4:00 P. M. to 5:00 P. M. on each work day during this period.

Claimant was allowed payment of eight hours for each day worked at Glencoe at the straight time rate and an arbitrary allowance of three (3) additional straight time hours applicable at the Brownton agency for service performed at Brownton, plus mileage for one round trip daily between Brownton and Glencoe.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. W. E. Waters, General Chairman, under date of October 13, 1964 and as Carrier's Exhibit B copy of letter written by Mr. Amour to Mr. Waters under date of January 5, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Wolff is the regularly assigned occupant of the Agent position at Brownton, Minnesota, with assigned hours 6:45 A. M. to 3:45 P. M. with an hour out for lunch between 10:45 A. M. and 11:45 A. M., Mondays through Fridays. Employee Witte, the regularly assigned occupant of the Agent position at Glencoe, Minnesota, with assigned hours 7:45 A. M. to 3:45 P. M., Mondays through Fridays, was absent on his three week vacation June 8, 1964, through June 26, 1964. For the two week period, June 8 through June 19, 1964, Claimant was assigned to and did work Witte's position for the regular hours of that position, and in addition, performed service at Brownton on each work day of his position there from 4 P. M. to 5 P. M. No emergency was claimed to exist. For his services during that period, Claimant was paid 8 hours each day at the straight time rate for the Glencoe position (which was 12 cents per hour higher than the rate for his Brownton position), two hours at time and one-half of the Brownton rate and mileage for one round trip daily between the two stations.

Organization contends that Carrier violated Rules 9(d), 14(b) and 24 of the Agreement. Carrier denies that any Rule was violated and points out that Claimant received more pay than he would have had he worked only his regularly assigned position during the period in question. Carrier also claims that past practice supports its position and refers to three previous claims which Organization had filed in similar cases and in which cases Organization "accepted" Carrier's declination. To this Organization replied that it had not accepted Carrier's declinations in the cases involved and that it had in fact progressed one similar case (which alleged violation of Rule 14(b) to this Board. (Docket TE-14586.) We find no proof of a past practice to support Carrier's contention in this regard.

In the case involved in Docket TE-14586 we decided in our Award No. 15541 with Referee Dorsey sitting as a member of the Board that although Carrier had violated Rule 14(b),

"The Claim as presented to this Board as well as the Claim processed on the property is predicated solely on alleged violation of Rule 14(b). In its Submission and arguments before this Board Petitioner cites other provisions of the Agreement which it submits supports a finding that the Claimant is entitled to the compensation prayed for in the Claim. We are constrained by the Claim as presented. We have no jurisdiction to enlarge it." (Emphasis ours.)

and we sustained the Claim of violation of Rule 14(b) and denied the Claim for compensation except as to travel expense which we found is provided for in Rule 14(b) in the circumstances.

The instant case, while based on a substantially similar set of facts, is distinguished from that in Award 15541 in that Organization here argued on the property as well as in the Submission that Rules 9(d) and 14(b) were violated and that Rule 24 (Guarantee) supported the claim for the payment.

Rule 9(d) provides:

"Employees will not be required to suspend work during regular hours. . . ."

We have regularly read this to mean that the suspension of work referred to is on the regular assignment of the involved employee. Thus Carrier here violated Rule 9(d), as well as Rule 14(b), which begins:

"Regularly assigned employees shall not be required to perform relief work except in cases of emergency."

Rule 24 (Guarantee) reads:

"Regularly assigned employees will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on assigned rest days and holidays.

This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the Carrier."

It is clear from the facts that Claimant did not receive the day's pay thus provided for his regular hours at his regularly assigned location, and since (under the terms of Rules 9 and 14) he was improperly suspended from working those hours at his regular position, he is entitled to be paid for them.

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1968.

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