

Award No. 16815
Docket No. TE-16273

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when on March 18, 1965, it blanked the position of agent-operator at Lakeside, Nebraska.

2. Carrier shall compensate C. E. Powers, extra idle telegrapher, for one day's pay (8 hours) at the rate of \$2.7168.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. C. E. Powers, hereinafter referred to as claimant, was on claim date an extra employe who was qualified and available to perform service at Lakeside, Nebraska on March 18, 1965.

Mr. E. B. Savage, the regularly assigned agent-operator at Lakeside, Nebraska, with a work week Monday through Friday, rest days Saturday and Sunday, was advised by the Chief dispatcher at 7:00 P.M., March 17, 1965, that it would be necessary for him to perform service as an extra train dispatcher on March 18, 1965.

The agent-operator position at Lakeside, Nebraska was blanked on March 18, 1965.

Claim was filed and handled in the usual manner, including a conference, up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 14.

(Exhibits not reproduced.)

In his reply of August 6, 1965, (Carrier's Exhibit No. 8) the General Chairman took exception to Carrier's citation of Award 11294 because it concerned abolishing rather than blanking positions, and again cited Rule 23(h).

In response thereto, the Carrier in its letter of August 20, 1965 (Carrier's Exhibit No. 9) cited Awards 5668, 6385, 7033, 10594, 12099 and 12358.

The next letter received from the General Chairman was dated December 17, 1965 (Carrier's Exhibit No. 10), in which he advised the Carrier that the claim is being handled further on appeal.

Carrier replied thereto in its letter of February 16, 1966, (Carrier's Exhibit No. 11) and cited Awards 12686 and 13769 in further support of its position; and in addition thereto directed attention to the fact that only one other such claim had previously been presented by the Petitioner on this property alleging that Carrier is required to fill a vacancy when the regular incumbent is absent, and that claim was permitted to expire under the time limits. Copies of the last three letters exchanged between the parties in the claim just referred to are attached hereto identified as Carrier's Exhibits Nos. 12, 13 and 14. It will be noted in Exhibit No. 13 that the General Chairman said:

"I do not believe I said the claim did not have merit but due to awards by the Board denying similar claims, it did not look like we had a chance with a claim of this kind."

The claim was then dropped, as evidenced by Exhibit No. 14.

The schedule of rules agreement between the parties, effective May 1, 1953, and amendments thereto is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 18, 1965, the regularly assigned Agent-Operator at Lakeside, Nebraska was temporarily assigned to other duty for that one day only. During his absence his position was blanked. This claim is on behalf of C. E. Powers, the extra idle telegrapher and is for a day's pay.

Our decisions have consistently held that in the absence of a specific rule prohibiting the blanking of a temporarily vacant position, the right of management to do so is unrestricted. Awards 12358 and 16187. In the Agreement applicable herein we find no such prohibitory rule. Rule 23 (h) has application only to extra work. Rule 8 has no application to an extra employees' right to fill a temporarily vacant position.

The claim is insupportable under the rules. It must accordingly be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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