Award No. 16876
Docket No. TE-15972

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated Telegraphers' Agreement when on December 17, 1964 it blanked the second trick telegrapher position at New Braunfels, Texas.

2. Account this violation Carrier will allow telegrapher J. R. Hernandez eight hours at the prevailing rate.

EMPLOYES' STATEMENT OF FACTS: Just before midnight, December 16, 1964, Mrs. M. C. Smith, who was regularly assigned to the position third shift at Austin, reported she was ill and would be unable to protect her assignment that was due to start at 12:01 A. M., December 17. The Carrier diverted S. T. Henderson, who was regularly assigned to the second shift position at New Braunfels, to perform the relief work on Mrs. Smith's position, as there were no available extra telegraphers. As a result of the work performed between midnight and 8:00 A. M., S. T. Henderson could not perform the work of his own second shift position at New Braunfels because of the Hours of Service Law.

District Chairman Spollin wired Chief Dispatcher M. H. Cunningham beginning at 11:53 A. M. on December 17, notifying him that the second shift position at New Braunfels was unprotected and also that Claimant J. R. Hernandez was available to perform the service on his rest day, beginning at 3:00 P. M. Chief Dispatcher Cunningham stated that the second trick shift at New Braunfels would be closed today only. See T. C. U. Exhibits 1 through 4 attached hereto.

It later developed during the second shift hours on December 17 that the Carrier had need of having the duties of the position performed and permitted a clerical employe to handle the mail and baggage on and off of Train No. 8.

OPINION OF BOARD: On December 17, 1964, at Austin, Texas, the regular assigned position of third trick shift telegrapher became unprotected due to sudden illness. There being no extra telegrapher available at Austin, Carrier assigned an employe who was regularly assigned to the second trick shift telegrapher position at New Braunfels, Texas, to perform the relief work at Austin. As a result of the relief work the employe could not perform his second shift position at New Braunfels because of the Hours of Service Law. The Organization informed Carrier before the New Braunfels second shift was to begin that Claimant, the regular swing relief telegrapher, was available to perform the service, on his rest day, of the unprotected second trick shift at New Braunfels. Claimant was not called to work the second shift. During the New Braunfels second shift a clerical employe handled mail and baggage on and off a certain train.

The Organization contends that Claimant was available to be called and the assignment was not entirely blanked because a clerical employe performed duties assigned to the telegraphers' position by handling mail and baggage on and off a certain train during the shift in question. Carrier contends that there were no relief telegraphers available to protect the assignment at New Braunfels and that it may blank a position in the absence of the regular assigned employe. Carrier further contends that a clerical employe may handle the mail on and off a train at any time.

There is no specific rule in the Agreement involved prohibiting the blanking of a temporarily vacant position, therefore Carrier has the unrestricted right to do so. The Organization offered no proof that the clerical employe performed duties that he did not normally perform and thereby prove that the position was not entirely blanked. Therefore, the claim will 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 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 violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1969.

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