

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

David H. Brown, Referee

## PARTIES TO DISPUTE:

## TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

## THE PENNSYLVANIA RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on The Pennsylvania Railroad, that:

The applicable Agreement between the Carrier and the ORT was violated when it, the Carrier, required the regular assigned agent at Walford, Pennsylvania, to suspend his duties and assume the duties at Wampum, Pennsylvania, agency for a part of each of the listed working days, thereby arbitrarily consolidating the two agencies.

The incumbent agent at Walford, Pennsylvania, J. H. Davis, who was required and permitted to assume the combined duties of the Walford and Wampum agencies, shall be compensated an eight (8) hour day at pro-rata rate of the agency at Wampum, Pennsylvania, in addition to his regular salary of his assigned agency, for a period of thirteen (13) working days starting March 13, 1963, and ending March 29, 1963, and for a period of fifteen (15) working days, starting April 8, 1963, and ending April 26, 1963.

The applicable Agreement, Regulations 5-A-1, 4-G-1, 5-G-1(b) and 4-F-1(c) as well as System Dockets Nos. 557 and 929 and LR cases 26903 (System Docket 1097) and LR C-5-63 and C-6-63, are used in support of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant, a Group 1 employee, was the regularly assigned Agent at Walford, Pennsylvania. The position was assigned to work five days per week, Monday through Friday, as were the other three agency positions involved in this claim.

All four agencies were located in the State of Pennsylvania north of Pittsburgh on various branch lines of Carrier as follows:

Station	Rail Miles from Pittsburgh
Wampum	41.0 (approx.)
Walford	54.8
Sharon	69.8
Greenville	84.5

**OPINION OF BOARD:** At issue is whether or not Carrier violated any of its Agreements with Petitioner when it required Claimant J. H. Davis, the regularly assigned agent at Walford, Pennsylvania to work a part of each of several days at the agency at Wampum, Pennsylvania.

We have carefully considered all of the claimed violations of various sections of the effective agreements between the parties. There is language in such agreements from which an inference might be drawn that Carrier should have had someone else available to fill in at Wampum. Yet, the specific language of Regulation 4-M-1 is obviously meant to cover a situation such as that with which we are here concerned. Such rule provides the method of paying "A regularly assigned employe who is required to work temporarily in a position other than his regular position . . ."

Such is our case here, an identical one in principle with that we faced in our decision resulting in Award No. 6291. We reaffirm the soundness of such decision, and shall adhere to it. Finding no violation of any Agreement between the parties, we must deny 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 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 20th day of February 1969.

#### **DISSENT TO AWARD 16958, DOCKET TE-15963**

Awards which tend to perpetuate the error of prior awards are equally erroneous.

The error here, and in Award 6291 upon which the majority relies, is in failure to correctly understand the purpose of rules like Regulation 4-M-1. The majority says, ". . . the specific language of Regulation 4-M-1 is obvi-

ously meant to cover a situation such as that with which we are here concerned." But this conclusion plainly contradicts the well known idea that a Carrier can do anything — within the law, etc. — which it has not bargained away.

Regulation 4-M-1 does not give the Carrier additional rights. It restricts Carrier rights. It protects an employe's right to hold a job of his own choosing, but permits some invasion of that right under circumstances traditionally arising within the scope of these employes' work peculiarities. Rules of this nature were intended to — and do — contemplate the complete absence from an employe's own position and working a complete shift on another.

The rule was not properly interpreted and applied in this award; therefore, I dissent.

**J. W. Whitehouse**  
Labor Member