

Award No. 17046

Docket No. TE-15910

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Lehigh Valley Railroad, that:

1. Carrier violated the agreement between the parties hereto when it failed to place D. C. Sikora on the Tift Terminal Relief Crew Dispatcher-Telegrapher position within 20 days after March 19, 1964, the date on which that position was advertised in Buffalo District Bulletin B-7.

2. Carrier violated the agreement between the parties hereto when it failed or refused to properly pay D. C. Sikora for the following days: April 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20 and 21, 1964.

3. Carrier violated the Agreement between the parties hereto when it failed or refused to pay D. C. Sikora an automobile mileage allowance involving his travel between Tift Terminal, N. Y., and Batavia, N. Y., to cover 10 days (80 miles per day at 7½ cents per mile) and \$1.00 expense allowance each day (10 days in all), April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964.

4. Carrier shall be required to pay D. C. Sikora for two hours travel time, Tift Terminal to Batavia and return, at the applicable Tift Terminal pay rate to cover each day, April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964, also an automobile mileage allowance of 80 miles per day at 7½ cents per mile and \$1.00 expense allowance, as provided in the agreement, to cover each of those days.

5. Carrier shall also be required to pay D. C. Sikora for eight hours at the applicable straight time rate of the Tift Terminal Relief Crew Dispatcher-Telegrapher position to cover assigned hours of that position each day, April 8, 9, 10, 11, 14, 15, 16, 17, 18 and 21, 1964, plus all time he worked at Batavia on April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964, outside regular hours of his Tift Termini-

nal relief assignment at time and one-half the applicable Tift Terminal pay rate, less the amount he has already been paid for services performed on April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964.

EMPLOYEES' STATEMENT OF FACTS: In a bulletin notice dated March 19, 1964, Carrier advertised for bid a vacant position (Crew Dispatcher-Telegrapher), at Tift Terminal, New York. Mr. D. C. Sikora, Claimant, was the senior applicant and was awarded the position on March 31, 1964.

However, Carrier did not assign Mr. Sikora to his position until April 22, 1964. Instead, he was required to continue until April 22 on the position he held prior thereto, as Agent-Telegrapher at Batavia, New York.

The Employees contend that Carrier violated the Agreement by not assigning Mr. Sikora to his position within twenty days after date of advertisement (March 19), asserting Rule 20 (b) in support thereof, and, accordingly, requested compensatory redress and reparations for days between April 8 (the expiration of the twenty days from date advertised) and April 22 (the date actually assigned).

Correspondence exchanged between the parties in the property handling of this dispute has been reproduced and is shown next following.

"June 1, 1964

Mr. Richard Taubar
Supervising Operator
Lehigh Valley Railroad Company
425 Brighton Street
Bethlehem, Pa.

Dear Sir:

It is the 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 it failed to place D. C. Sikora on the Tift Terminal Relief Crew Dispatcher-Telegrapher position within 20 days after March 19, 1964, the date on which that position was advertised in Buffalo District Bulletin B-7.
2. Carrier violated the agreement between the parties hereto when it failed or refused to properly pay D. C. Sikora for the following days: April 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20 and 21, 1964.
3. Carrier violated the agreement between the parties hereto when it failed or refused to pay D. C. Sikora an automobile mileage allowance involving his travel between Tift Terminal, N. Y., and Batavia, N. Y., to cover 10 days (80 miles per day at 7½ cents per mile) and \$1.00 expense allowance each day (10 days in all), April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964.

On March 29, 1964, the Local supervision made a check with the Local Chairman of the applications received, and on March 31, 1964, the Carrier issued a bulletin assigning the above Tift Terminal Relief Crew Dispatcher-Telegrapher position to claimant. Claimant's position of Agent-Telegrapher, Batavia, New York was bulletined for applications on the same date.

There was no qualified extra employee available to place on the Agent-Telegrapher, Batavia, New York position during the period the Batavia, New York position was bulletined. This created an emergency condition for the Carrier, and, having no qualified employee to work the Batavia Agent-Telegrapher position, Carrier was forced to require claimant to remain at that position until another qualified employee could be made available. The first date such an employee could be made available was April 22, 1964, and claimant was then released from the Batavia, New York Agent-Telegrapher position and placed on his Tift Terminal Relief Crew Dispatcher position that same date.

The claimant was paid the highest rate of the position involved, which rates of pay were the Tift Terminal Relief Crew Dispatcher-Telegrapher position rates, on the dates of this claim, April 8, 1964 to April 21, 1964.

The Organization then filed the instant claim with the Supervising Operator in letter dated June 1, 1964. The claim has been denied by the Carrier.

OPINION OF BOARD: Claimant, D. C. Sikora, was the Agent-Telegrapher at Batavia, New York, with a pay rate of \$2.5998 per hour and work days of Monday through Friday, rest days of Saturday and Sunday.

On March 19, 1964, the Tift, New York, Relief Crew Dispatcher-Telegrapher position was advertised. Claimant, being the senior applicant, was awarded the Tift position on March 31, 1964. The Tift position is made up as follows:

Tuesday and Wednesday	— 7:59 A.M. — 3:59 P.M.	at \$2.8668 per hour
Thursday and Friday	— 3:59 P.M. — 11:59 P.M.	at 2.7078 per hour
Saturdays	— 11:59 P.M. — 7:59 A.M.	at 2.7078 per hour
Sundays and Mondays	— Rest Days	

Claimant was actually placed at work on the Tift position on Wednesday, April 22, 1964.

Prior to April 22, 1964, Claimant was required by Carrier to cover the Batavia position on a continuous basis of eight (8) hours Monday through Friday and idle Saturdays and Sundays. During the period from Wednesday, April 8 to April 21, Claimant was paid at the rate of \$2.8668 per hour on Mondays, Tuesdays and Wednesdays, at the rate of \$2.7078 per hour on Thursdays and Fridays, and nothing on Saturdays and Sundays.

The Organization contends that 20 days after the March 19, 1964 date of first advertisement Claimant was the permanent occupant of the Tift position and entitled to be treated as same. That failure to consider him as placed at that assignment was a violation of Rule 20(b), "Positions must be permanently filled within 20 days after date of advertisement", and Rules 6, 11, 12 and 13 of the Agreement.

Carrier contends that the Organization's interpretation of Rule 20 is unfounded in that the 20 day period clause applies to the time when an employe must qualify and assume new duties when released from his old position. Carrier further contends that there was no qualified extra or relief employe available to replace Claimant at Batavia, and that Claimant was paid at the higher Tift rate while remaining at his old position.

The evidence shows that the Agreement was violated when Claimant was not placed at the Tift position within 20 days after the date of advertisement of the position. The Claimant must be treated as having been transferred to the Tift Terminal Relief Position as of the 21st day following advertisement and is, therefore, entitled to and is awarded the following: (1) 2 hours' travel time at straight time rate, Tift to Batavia and return, at the applicable Tift pay rate for the days of April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964, (2) automobile mileage allowance of 80 miles per day at the rate of .075 cents per mile for the days of April 8, 9, 10, 13, 14, 15, 16, 17, 20 and 21, 1964, (3) payment for eight (8) hours, at pro rata rate of the Tift Relief Crew Dispatcher-Telegrapher position rate for Saturday hours (\$2.7078) for the Saturdays of April 11 and 18, 1964. (See Awards 13908, 14223).

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 to the extent set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1969.