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Award No. 17095

Docket No. TE-15532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION (FORMERLY THE ORDER OF
RAILROAD TELEGRAPHERS)**

**THE NEW YORK CENTRAL RAILROAD, EASTERN
DISTRICT, BOSTON AND ALBANY DIVISION**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the New York Central Railroad (B&A Division), that:

1. Carrier violated the terms of the Agreement between the parties when it failed to permit W. Waite, regular incumbent Cambridge Street, on the second trick of the Grand Junction Branch, Boston, Massachusetts to work Saturday, October 12, 1963 and Sunday, October 13, 1963, and required or permitted spare crossing man C. Powers who already had worked five consecutive days or 40 hours to perform rest day relief service on first trick position Cambridge Street.

2. Carrier shall be required to pay:

W. Waite 8 hours at time and one-half rate of Cambridge Street Crossing on the Grand Junction Branch, Boston, Massachusetts for Saturday, October 12 and Sunday, October 13, 1963.

C. Powers the difference between what he was paid and 8 hours at time and one-half rate of Cambridge Street Crossing on the Grand Junction Branch, Boston, Massachusetts for Saturday, October 12 and Sunday, October 13, 1963.

EMPLOYEES' STATEMENT OF FACTS: On October 11, 1963, A. Chervie was instructed to take his regular one week's vacation. Mr. Chervie owned the first shift at Cambridge Street which had regular assigned rest days of Monday and Tuesday. Mr. Chervie began his vacation on Saturday October 12 and continued on the vacation through October 18, Friday.

Claimant W. Waite is the regular incumbent of the second shift position at Cambridge Street Crossing, which has regular assigned rest days of Saturday and Sunday.

"For the reason stated, we cannot accept Mr. Stipek's denial and herewith refer the matter to you for decision. Please advise payroll period in which payment will be made."

Carrier denied the appeal on May 7, 1964 as follows:

"Please refer to your letter dated April 20, 1964, file 10-U-23, regarding claim on behalf of W. Waite, Crossing Police Officer for eight hours pay at punitive rate for October 12, 13, 1963, account not being called to perform service on his rest days.

"Carrier's files reflect that Mr. Powers, an extra man from the guaranteed extra list was used to provide vacation relief on the second trick at Broadway Street Crossing from Monday to Friday, October 7 through October 11, 1963. Starting October 12, 1963 he covered a vacation assignment on the first trick at the Cambridge Street Crossing until October 20, 1963. During this latter period he was off on October 15, 16, the regular rest days of the assignment.

"It is evident from the record that Mr. Powers was not being used as an extra man to fill vacancies in regular assignments or provide service on work which was not a part of any assignment.

"He was used, however, as a vacation relief employe under the terms of the Vacation Agreement as contemplated in Rule 20 of the Agreement. We refer specifically to Articles 6, 10, 12(a) (b) of the Vacation Agreement.

"For the reason outlined herein the claim lacks agreement support and accordingly is denied."

OPINION OF BOARD: The record reveals that during the period beginning Monday, October 7, 1963, and ending on Sunday, October 20, 1963, Claimant Powers, an extra employe, was used in relief of two regular employes who were on vacation as follows: Monday, October 7, through Friday, October 11, on the second trick at Broadway Crossing; Saturday, October 12 through Sunday, October 20, on the first trick at Cambridge Street Crossing, taking off the rest days of this position, Tuesday and Wednesday, October 15 and 16.

The rest days of the Broadway Crossing position were Saturday and Sunday, October 12 and 13. Thus, Powers worked eight consecutive days, including these two rest days, before being afforded a rest day of his own.

He was paid the straight time rate for each day worked. He claims he should have been paid at the rest day rate of time and one-half for the two days, October 12 and 13. The claim here is for the difference, as stated in Part 2 of the Statement of Claim.

Claimant Waite is the regular assigned occupant of the second trick at Cambridge Street. His rest days are Saturday and Sunday. In his behalf it is claimed that he should have been permitted to "move up" to the first trick on his two rest days, October 12 and 13, in preference to extra employe Powers, who had worked the previous five days on the Broadway job.

In support of their claim for Waite the Employees appear to have relied, during handling on the property, on the "Work on Unassigned Days" rule and rules relating to assignment on test days of a position.

Obviously, none of these rules apply. The days involved were not "unassigned days," nor were they rest days of the position, the first trick at Cambridge Street.

Rule 14 (h), cited by the Employees in their submission to the Board, lends no support to the claim, aside from its questionable admissibility. There is no showing that Waite requested an opportunity to take advantage of the provisions of this rule, nor that the Carrier had any obligation to apply it under the circumstances. The claim for Waite, therefore, it without merit and will be denied.

With respect to the claim that Powers should have been paid at the rest day rate for service performed on October 12 and 13, Awards of this Board consistently hold that in similar circumstances extra employees are entitled to the rest days of a position which they have filled for the full five-day work period, and that they should be paid at the rest day rate for work performed on such days. See Awards 6970, 6971, 7391, 9943, 10391, 10803, 11528, 11859, 12428, 12654, 12760, 12947, 13320, 13860, 14096, 14698, 14986, 15442, 15464, 16019, 16695.

Carrier urges certain provisions of the Vacation Agreement in support of its position. However, we view the claim of Powers as involving only the question of compensation for work performed on rest days, therefore, the vacation rules are not in point. The claim in behalf of Powers will be sustained.

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 only to the extent indicated in the Opinion.

A W A R D

Claim of W. Waite denied; claim of C. Powers sustained, both in conformity with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1969.

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