



Award No. 17105

Docket No. TE-15929

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
NEW YORK CENTRAL RAILROAD (SOUTHERN DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York Central System (South), that:

1. Carrier violated the agreement, Article 21, when on November 8, 1964, it failed to call Mr. J. H. Hutton, who was the senior idle employee, to work first trick at Belt Jct. Indianapolis, Indiana, and instead called Mr. R. L. Smith, who was junior to Mr. Hutton.
2. Carrier shall now compensate Mr. J. H. Hutton for eight (8) hours pay at the Belt Jct. rate, which is \$2.6028 per hour.

EMPLOYEES' STATEMENT OF FACTS:

(a) Statement of the case:

This dispute arose on November 8, 1964, a Sunday, when the Carrier called and assigned a junior extra employee, R. L. Smith, to perform service at Belt Junction Indianapolis. There were no positions assigned at Belt Junction on Sunday, November 8, 1964.

In handling of the claim on the property Employees took the position that Article 21, Section XII, applied to the situation at Belt Junction.

The Carrier took the position originally that Article 21, Section XIII applied to the situation at Belt Junction but when it was pointed out that there was no vacancy or regular assignment at Belt Junction, the Carrier then changed its argument and relied on Article 4 (f) of the Agreement. The Employees countered this argument by stating that the Carrier was excerpting just a part of Article 4 (f) and that when read in its context, including the note, claimant Hutton should have been called to perform the work at Belt Junction on November 8, 1964.

(b) Issues:

- (1) The issue in this dispute is whether the Carrier violated Article 21, Section XII, when it called a junior extra employee who had completed

6, account track work in that vicinity. Operator J. H. Hutton, who was regularly assigned to the first trick at Gridley Tower, Anderson, Monday through Friday, was also available. However, since Operator Smith was only 22 miles from the point of vacancy, 10 miles closer than Mr. Hutton, he was called at 8:20 a.m. and was on duty at 8:40 a.m. The Organization contends that Operator Hutton, as the senior man, should have been called; therefore, claim in his favor for a day lost.

Claim has been progressed through proper channels in accordance with the Time Limit Rule.

OPINION OF BOARD: On Sunday, November 8, 1964, due to a derailment, it became necessary to run a train to Belt Junction, Indiana. This not being a regular assigned office, Carrier called Operator Smith, an extra employee who had 40 hours in his work week, to work the first trick at Belt Junction. Claimant Hutton, the senior available operator, was not called. Operator Smith lived 22 miles from Belt Junction and Operator Hutton 35 miles.

The Organization contends that Claimant was the oldest senior operator available and should have been called, failure to do so was a violation of Article 21, Section XIII(a)(1) & (3) and (b) (1) & (2) and Article 21, Section XII.

Carrier contends that an emergency existed, due to a derailment, and an operator was needed as quickly as could be had; and Operator Smith, being the closest at the time, was called. Carrier also contends that the NOTE: in Article 21, Section XIII, "The use of employees herein provided for is conditional upon the requirement that he can perform such service without delay to service * * *", controls the section in this instance, because Operator Hutton would have been a delay to service. Carrier further contends that it is admitted that there was an emergency and therefore Article 4(f) of the Agreement, which reads in part: "* * * This is not intended to deprive the management of the right to use any telegrapher to perform extra service at any location in emergencies, * * *."

The Organization further contended that the NOTE: to Article 4(f), "The expression 'emergencies' as herein used contemplates circumstances wherein time does not permit use of the telegrapher who would otherwise stand for service.", controls the use of paragraph (f) and Claimant could have arrived at the vacancy 5 minutes before Operator Smith.

Belt Junction was not a regularly assigned position or office.

Article 21, Section XII—Work on Unassigned Days, does not apply, in this claim, because this section controls service on unassigned days of a regularly assigned position.

Article 21, Section XII—Filling Temporary Vacancies On Regular Assignments, also does not apply, due to Belt Junction not having regular assignments.

It is not denied that an emergency existed, due to the derailment, (See T.C.U. Exhibits 17 and 18) as contended by Carrier on the property and Article 4(f) controls in this claim.

Carrier acted within the provisions of Article 4(f) and therefore the

Board finds that the Agreement was not violated and the claim should 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.