



Award No. 17185

Docket No. TE-16414

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Gulf, Mobile and Ohio Railroad, that:

1. (A) Carrier violated the Agreement between the parties when it required L. M. Springer to suspend work on his regularly assigned relief position at South Joliet, Illinois, and perform non-emergency vacation relief work at Lockport, Illinois, August 10 through August 28, 1964.

(B) Carrier shall compensate L. M. Springer, in addition to compensation and allowance already received for service performed at Lockport, Illinois, for a day's pay at the pro rata rate on August 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, and 29, 1964.

2. (A) Carrier violated the Agreement between the Parties when it required J. L. Lamborn to suspend work on his regularly assigned relief position at Bridgeport Bridge, Illinois, and perform non-emergency vacation relief work on the first trick position at that Station, September 8 through September 19, 1964.

(B) Carrier shall compensate J. L. Lamborn, in addition to compensation already received, a day's pay at pro rata rate on the Bridgeport Bridge relief position for September 8, 9, 10, 13, 14, 15, 16, and 17, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective June 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

CLAIM NO. 1

Claimant Springer is regularly assigned to the Relief Telegrapher-Leverman position at South Joliet, Illinois, with assigned rest days of Monday and Tuesday. Effective August 13, 1964, Claimant's rest days were changed to Thursday and Friday.

Claimant was required by the Carrier to suspend work on his regular relief assignment and to perform non-emergency vacation relief on the Agent-Telegrapher position at Lockport, Illinois, August 10 through August 28, 1964.

CLAIM NO. 2

Claimant Lamborn is regularly assigned to the Relief position at Bridgeport Bridge, Illinois, with assigned rest days of Friday and Saturday.

Claimant was required to suspend work on his regular relief assignment and perform non-emergency vacation relief work on the first trick position at Bridgeport Bridge, September 8 through September 17, 1964.

Claims were filed and handled in the usual manner, including conference, up to and including the highest designated officer of the Carrier and have been declined. Correspondence reflecting the handling of Claim No. 1 on the property is, for all practical purposes, the same as the handling of Claim No. 2, so only the correspondence exchanged in Claim No. 1 is attached hereto as Exhibits 1 through 9.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS:

CLAIM NO. 1

At the time of this claim, L. M. Springer was assigned the relief position relieving the telegraphers on their rest days at South Joliet, Illinois. In order to relieve the agent-telegrapher at Lockport, Illinois, while he was on vacation, the telegraphers at South Joliet were required to work their rest days and the claimant worked as agent-telegrapher at Lockport. For each day referred to in the claim, the claimant was paid penalty rates of time and one-half. This is in accordance with past practice.

During the year 1963, the Claimant (Mr. Springer) was used in the same manner to relieve the agent at Lemont, Illinois, for which he was paid at the penalty rate of time and one-half. No claim was made for additional penalty payments on behalf of Claimant in 1963.

CLAIM NO. 2

On the dates referred to, the occupant of the first trick position at Bridgeport Bridge was on vacation, during which time he was relieved by Claimant J. L. Lamborn, who occupied the relief position at Bridgeport Bridge. On the days referred to in the claim, Claimant was paid at the penalty rate of time and one-half and the other telegraphers at Bridgeport Bridge, whom he normally relieved, were paid at the rate of time and one-half for working their rest days.

OPINION OF BOARD: Claimants are regularly assigned employees who were required by the Carrier to vacate their positions on the claim dates for the purpose of affording vacation relief to other regularly assigned employees.

For this service Claimants were paid time and one-half as provided by Rule 9. Employees contend, however, that Rule 9 prohibits the use of regularly assigned employees for relief purposes except in cases of emergency, and that no emergency existed in these instances.

Under similar circumstances this Board has found rules similar to Rule

9 to be inapplicable. Awards 16492, 16994. Accordingly, the claims will be sustained. However, since one-half time has been paid for each day Claimants were diverted from their regular assignments, under what appears to be a clear misapprehension of the applicability of Rule 9, this payment is to be taken into account, so that the reparation awarded is the difference between the half time payments previously made and a full day's pay for their own assignments on each claim date.

This decision obviously applies solely to the particular facts and circumstances of this case.

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.

A W A R D

Claims sustained in accordance 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 28th day of May 1969.