

Award Number 17905
Docket Number TE-17785

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington and Quincy Railroad, that:

CLAIM NO. 1

1. Carrier violated the Agreement when on May 2, 1967, it required and permitted the office manager, Chicago, Illinois, an employee not covered by the Telegraphers' Agreement, to perform the duties of wire chief.
2. Carrier shall compensate Mr. R. J. Rockel, second wire chief, Chicago, Illinois, for one day's pay at time and one-half rate for violation set forth above. Amount due is \$42.65.

CLAIM NO. 2

1. Carrier violated the Agreement when on May 3, 1967, it required and permitted the office manager, Chicago, Illinois, an employee not covered by the Telegraphers' Agreement, to perform the duties of wire chief.
2. Carrier shall compensate Mr. J. H. Davenport, relief wire chief, Chicago, Illinois, for one day's pay at time and one-half rate for violation set forth above. Amount due is \$42.65.

CLAIM NO. 3

1. Carrier violated the Agreement when on May 4, 1967, it required and permitted the office manager, Chicago, Illinois, an employee not covered by the Telegraphers' Agreement, to perform the duties of wire chief.
2. Carrier shall compensate Mr. J. H. Davenport, relief wire chief, Chicago, Illinois, for one day's pay at time and one-half rate for violation set forth above. Amount due is 42.65.

CLAIM NO. 4

1. Carrier violated the Agreement when on June 28, 1967, when it required and permitted the office manager, Chicago, Illinois, an employee not covered by the Agreement, to perform the duties of wire chief.

2. Carrier shall compensate Mr. J. H. Davenport, relief wire chief, Chicago, Illinois, for one day's pay at time and one-half rate for the violation set forth above. Amount due is \$42.65.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, dated May 1, 1953, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

These claims were timely presented, progressed, including conference with the highest officer designated by the Carrier to receive appeals, and have been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

The claims arose because the Carrier required and permitted the office manager to perform the work of the 1st shift Wire Chief position in the Chicago Relay Office of the Carrier on dates enumerated in the claims when the incumbent of the wire chief position was absent due to personal reasons and there were no qualified extra employees to fill the vacancies. The office manager is a supervisory employee not covered by the Telegraphers' Agreement.

Each of the named claimants is a qualified wire chief, regularly assigned to such position in the Chicago Relay Office, who was observing his rest day and who was available and willing to perform the work of the blanked position. The claim, in each case, is for one day's pay at the time and one-half rate of the first shift wire chief position on each day the office manager performed the work of that position while the regular incumbent was absent, which claimant would have received had he been utilized to fill the vacancy in lieu of the office manager.

Carrier's defense in assigning the office manager to perform the work of the first shift wire chief position on days the regular incumbent was absent may be summarized as follows: (1) Claimants were not qualified and therefore the Office Manager would have assisted in performing the work of the position, and (2) an emergency existed as a result of the absence of the regular incumbent which would have interrupted Carrier's service had the Office Manager not performed the work of the wire chief position.

(b) ISSUE

When a vacancy occurs on a position which is embraced by the Agreement, and there is no available qualified extra employee to fill the vacancy, may the Carrier assign the work to a supervisory employee not covered thereby in lieu of an available employee within the scope thereof?

(c) FACTS

The currently effective agreement between the parties lists on pages 33, 34 and 35, twenty-one relay offices comprising the Relay Division, listing fifty-five wire chief positions which classification (wire chief) is carried in the scope thereof. Page 33 lists the positions in the Chicago General Office (relay), as follows:

Employee	Assignment	Claim Dates
R. J. Rockel	Second trick wire chief, Wednesday—Sunday with rest days, Monday and Tuesday	May 2, 1967 (Tuesday)
J. H. Davenport	Relief wire chief with assigned rest days, Wednesday and Thursday. Relieves as follows: Friday—Third wire chief Saturday—First wire chief Sunday—First wire chief Monday—Second wire chief Tuesday—Second wire chief	May 2 (Wednesday), 4 (Thursday) and June 28 (Wednesday), 1967

The dispute submitted to the Board was handled on the property as four separate claims. These claims were declined by the Carrier's Highest Designated Officer in four separate letters dated October 20, 1967, attached hereto as Carrier's Exhibits 1 through 4, inclusive.

The Schedule of Rules Agreement between the parties, effective May 1, 1953, and amendments thereto, are on file with the Board and are by reference made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: The parties are in essential agreement concerning what happened. On the claim dates the first shift Wire Chief requested was granted permission to be absent from his job. However, instead of filling the resulting vacancy, by utilizing rule 22, the Carrier required or premitted the Office Manager to perform the necessary duties.

Claims were filed in favor of two employees in the office who were idle, observing rest days. The claimant in Claim No. 1 is the second shift Wire Chief. The other three instances occurred on the rest days of the regular relief employee who relieves the Wire Chiefs on all three shifts. He is named as claimant in those instances, Claim 2, 3, and 4. These claimants were available, and could have worked in the place of the absent Wire Chief.

Carrier's contention that neither of the two claimants is qualified to perform the first shift Wire Chief work is weak. Claimant in Claim No. 1 is the regular assigned second shift Wire Chief in the same office. His duties are continuous with and identical to those of the first shift. It requires the same knowledge and ability to align communication circuits during the evening hours as during the morning. Claimant in Claims No. 2, 3, 4 is the regular assigned rest day relief Wire Chief who works all three shifts. He actually works the first shift every week on Saturdays and Sundays. The same ability is required to align communication circuits on week-ends as on any other day of the week.

Since it is well established that the work of testing and regulating (aligning) telegraph and telephone circuits is work reserved to Wire Chiefs or other employees covered by the telegraphers' agreement and after considering the testimony presented, exhibits introduced and the Agreement Rules For Telegraphers effective May 1, 1953, we sustain the claims.

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

Claim 1 sustained.

Claim 2 sustained.

Claim 3 sustained.

Claim 4 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1970.