



Award Number 17928
Docket Number TE-17568

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE NEW YORK, NEW HAVEN AND HARTFORD RAIL-
ROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven & Hartford Railroad, that:

- (a) Carrier violated Article 3 of Transportation-Communication Employees Union Agreement on Sunday, December 11, 1966 when S. S. Operator-Clerk D. Dalzell was held off one of work days of his assignment.
- (b) Carrier shall compensate S. S. Operator-Clerk D. Dalzell for work denied him on December 11, 1966. Eight (8) hours pro rata at the rate of his regular assignment, S. S. Operator-Clerk, Old Saybrook, Connecticut.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between The New York, New Haven & Hartford Railroad Company and this Union, datd September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed in accordance with the time limits provided by the Agreement, up to, including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

This claim arose due to Carrier requiring the Claimant, a regularly assigned employee, to lose eight (8) hours' work on December 11, 1966, in order that he could be used on another position the following day without violating the Hours of Service Act. Carrier declined to compensate him for the time lost as a result of this action.

(b) THE ISSUE

Is an employee entitled to be paid for time lost as the result of Carrier taking action to prevent a violation of the Hours of Service Law?

CARRIER'S STATEMENT OF FACTS: Claimant in this dispute, Mr. D. Dalzell, held regular second trick operator-clerk's assignment at Old Saybrook, Connecticut, with work days of Wednesday to Sunday, rest days Monday and Tuesday. During the week ending December 10, 1966, Mr. Dalzell was asked if he would cover the first trick agent's position at Guilford, Connecticut, with work days of Monday through Friday. However, before this diversion could be accomplished, it was necessary to withhold the claimant from his regular assignment at Old Saybrook on Sunday, December 12, 1966, so that he would not be in violation of the Hours of Service Law.

For the work week ending December 17, 1966, the claimant earned \$162.31. Had Mr. Dalzell remained at Old Saybrook, his earnings would have amounted to \$117.07 for that same period.

Claim was instituted on behalf of Mr. Dalzell for eight hours at the pro rata rate of the operator-clerk's position at Old Saybrook for Sunday, December 11, 1966, alleging a violation of Article 3 and further contending the Carrier did not properly deny Mr. Dalzell's time claim.

The claim was denied on the property on the grounds that Mr. Dalzell was properly handled under Article 29 of the Schedule Agreement that he suffered no loss of earnings account of such diversion. In addition, Mr. Dalzell's initial time claim was properly denied in accordance with the rules of Agreement.

Attached in exhibit form is copy of pertinent correspondence:

"A"—Superintendent's decision

"B"—General Chairman's appeal

"C"—Carrier's final decision

Copy of Agreement dated September 1, 1949, as amended, between the parties is on file with this Board and is, by reference, made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was regularly assigned Signal Station Operator-Clerk at Old Saybrook, Connecticut with assigned work days Wednesday through Sundays with hours 3:00 P.M. to 11:00 P.M.

Carrier found it necessary to fill a vacancy in the position of Agent-Operator at Guilford, with hours 8:00 A.M. to 5:00 P.M. beginning Monday, December 12, 1966. Carrier canvassed regularly assigned employees including Claimant who agreed to accept the offer of the position beginning Monday December 12, 1966. The Claimant was withheld from his regular assignment at Old Saybrook on Sunday, December 11, 1966 on account of the Hours of Service Law.

The issue is whether the Claimant is entitled to one day's pay for Sunday December 11, 1966 when he was withheld from service.

The Employees position is that the Carrier's necessity to comply with the Hours of Service Law is not a bar to compensation for work denied the Claimant because of such compliance with the Hours of Service Act. It further contends that such compliance does not relieve the Carrier from its obligation under the Guarantee Rule in Article 3 of the Agreement. Employee further maintain that the Claimant, when he agreed to accept the

position at Guilford, did not agree to forego the benefits of Article 3 nor could he, as an individual, abrogate any provisions of the Agreement.

Carrier's position is that Claimant was not ordered to accept the new position but voluntarily agreed to be diverted. It concludes, that Claimant relinquished any right to make a claim for the alleged violation of Article 3 and is therefore estopped to assert such claim in the light of his voluntary acceptance of the position.

The Board must conclude that the provision of the Hours of Service Act must prevail in situations where there is conflict between the Act and the Labor Agreement of the Parties. Support for this conclusion is found in previous holdings of this Board in Award 6843, 8981 and 15947. In compliance with the provisions of the Hours of Service Act the Carrier was required to withhold the Claimant from service on Sunday December 11, 1966. The record reveals that the Claimant was not compelled to work the Guilford job but did so voluntarily. Under those circumstances of voluntary acceptance, the Claimant's claim for compensation under Article 3 of the Agreement can not prevail. Support for this determination is found in the following decisions of this Board in Awards 9852, 12646, 14388, 15827 and 16837.

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 21st day of May 1970.