

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John B. Criswell, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC**

**PENN CENTRAL TRANSPORTATION COMPANY**  
**(New York and Northeastern Regions, except Springfield Division)**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Company, T-C 5705, that:

**CLAIM NO. 1**

Carrier File: 20-9-15 (TE68.39)

Committee File: 11-102-79

1. Carrier violated Article 27(a) of T.C.E.U. Agreement when, on April 29, 1968, it failed to place successful applicant for position of Telephoner-Clerk, Dresden, N. Y. — 9:00 P. M. to 5:00 A. M. trick on assignment within ten (10) days after close of bidding for assignment.

2. Carrier shall compensate R. S. Beaty for each day, 8 hours at \$3.0466 per hour, while held off his assigned position. The dates being May 15 to May 21, inclusive, 1968, May 24 to May 31, inclusive, 1968 and June 1 to June 7, inclusive, 1968. This being 22 days.

**CLAIM NO. 2**

Carrier File: 20-9-123-S (TE68.31)

Committee File: 11-102-75

1. Carrier violated Article 27(a) of T.C.E.U. Agreement when, on April 29, 1968, it failed to place successful applicant for position of Telephoner-Clerk, Dresden, N. Y. — 9:00 P. M. to 5:00 A. M. trick on assignment within ten (10) days after close of bidding for assignment.

2. Carrier shall compensate R. S. Beaty for each day, 8 hours at \$3.0466 per hour, while held off his assigned position. The dates being April 29 and 30, 1968 and May 1 to May 14, inclusive, 1968. This being 16 days.

Mr. R. S. Beaty, Telephoner Clerk  
R.D. No. 2  
Beaver Dam, New York

Reference to your time claims for 8 hours at Dresden account held off regular assignment, April 29 and 30, May 1, thru 14 (2 claims May 12) are denied as there is no rule in the agreement that has been violated. Rate of pay at Himrods is higher than Dresden rate.

/s/ R. W. Burke"

[Letterhead of]

**"TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

Pottersdale, Penna. 16871

July 5, 1968

File 11-68-RJS  
Claimant: R. S. Beaty

June 4, 1968

Mr. G. E. Raynor  
Asst. Trans. Supt.-Labor Relations  
Penn Central Company  
320 Central Avenue  
Rochester, New York 14605

Dear Sir:

Claim is presented as follows:

**STATEMENT OF CLAIM:**

1. Carrier violated Article 27(a) of T.C.E.U. Agreement when, on April 29, 1968, it failed to place successful applicant for position of Telephoner-Clerk, Dresden, N. Y. — 9:00 P. M. to 5:00 A. M. trick on assignment within ten (10) days after close of bidding for assignment.
2. Carrier shall compensate R. S. Beaty for each day, 8 hours at \$3.0466 per hour, while held off his assigned position. The dates being April 29 and 30, 1968 and May 1 to May 14, inclusive, 1968. This being 16 days.

**STATEMENT OF FACTS:**

On Bid Sheet No. 7, dated April 9, 1968, Position of Telep-Clerk at Dresden (9:00 P. M. to 5:00 A. M.), Rate \$3.0466 per hour was advertised with bids closing at 12:00 Noon on April 19, 1968.

On Bid Sheet No. 8, dated April 22, 1968 R. S. Beaty was assigned position of Telep-Clerk, Dresden (9:00 to 5:00) as advertised on Bid Sheet No. 7 mentioned in first paragraph.

Mr. G. E. Raynor  
Asst. Trans. Supt.-Labor Relations  
Penn Central Company  
320 Central Avenue  
Rochester, New York 14605

Dear Sir:

Claim is presented as follows:

**STATEMENT OF CLAIM:**

1. Carrier violated Article 27(a) of TCEU Agreement when, on April 29, 1968, it failed to place successful applicant for position of Telephoner-Clerk, Dresden, N. Y. — 9:00 P. M. to 5:00 A. M. trick on assignment within ten (10) days after close of bidding for assignment.

2. Carrier shall compensate R. S. Beaty for each day, 8 hours at \$3.0466 per hour, while held off his assigned position. The dates being May 15 to May 21, inclusive, 1968, May 24 to May 31, inclusive, 1968 and June 1 to June 7, inclusive, 1968. This being 22 days.

**STATEMENT OF FACTS:**

On Bid Sheet No. 7, dated April 9, 1968, Position of Telep-Clerk at Dresden, (9:00 P. M. to 5:00 A. M.), rate \$3.0466 per hour was advertised with bids closing at 12:00 Noon on April 19, 1968.

On Bid Sheet No. 8, dated April 22, 1968 R. S. Beaty was assigned position of Telep-Clerk, Dresden (9:00 to 5:00) as advertised on Bid Sheet No. 7 mentioned in first paragraph.

R. S. Beaty was not relieved of position at Himrods Jct., N. Y. within 10 days after April 19, 1968 to assume position at Dresden, N. Y., even though a qualified extra man was available to effect such relief.

**POSITION OF EMPLOYES:**

Article 27(a) states that the successful applicant for a position will be notified and placed on the position within 10 days from the expiration date of the notice. Date of notice in this case being April 19, 1968.

An extra employee fully qualified to assume R. S. Beaty's duties at Himrods Jct. was available during this 10 day period and could have been placed on this position to allow R. S. Beaty to assume duties at Dresden. This extra employee was G. E. Bottorf.

Since the carrier chose to ignore the provisions of TCEU Agreement covering assignment of positions, Article 27 (a), the rate of pay at Dresden, N. Y., 9:00 P. M. to 5:00 A. M. trick, provides the basis for compensation to which R. S. Beaty is entitled.

The claims were subsequently progressed on the property in the usual manner up to and including the Assistant General Manager, Employee Relations (now Superintendent-Labor Relations and Personnel) who is the highest officer of the Carrier designated to handle such disputes on the Region. Claim No. 1, quoted above, was denied in a letter dated November 15, 1968, and Claim No. 2, also quoted above, was denied in a letter dated October 1, 1968.

**OPINION OF BOARD:** In these two claims, the Organization charges the Carrier with violation of the Agreement for not timely placing an employe on a position for which he had been the successful bidder. Both parties, in arguments to this Board, agree that there was such a violation, but contest whether or not the section of each claim concerning compensation should be allowed.

We find that the Claimant, during the period cited, was filling an assignment with the actual earnings higher than they would have been had he been on his regular assignment, thus sustaining no loss in pay or work opportunity.

Petitioner mentions Award No. 28 of Special Board of Adjustment No. 421 in its presentation as parallel to the case at hand, as does the Carrier.

That Award says, in part:

"... In view of the fact that Claimant increased his earnings by virtue of being diverted to the vacancy at Int. 26, and since there is no showing that any other employe was improperly deprived of work or pay, we conclude that Part 2 of the claim should be denied."

Following that Award, we sustain Paragraphs 1 of Claims 1 and 2, and deny Paragraphs 2.

**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.

#### AWARD

Paragraphs 1 of Claims 1 and 2 sustained; Paragraphs 2 of Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

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