

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Arthur W. Devine, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION DIVISION, BRAC****CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

1. Carrier violated the terms of the Agreement when it requires R. E. Carter, regularly assigned relief day operator at Davis Junction, Illinois to suspend work on his regular assignment and perform relief work on October 3, 4, 10, 11, 14, 17, 18, 21, 24, 25, November 1, 1968 and subsequent dates.

2. As a result of these violations, Carrier shall now pay Mr. Carter eight hours' pay at the pro rata rate of his regular position for each date listed in Item 1, above.

3. The subsequent dates referred to in Item 1 above, are: November 4, 7, 8, 11, 14, 15, 17, 18, 21, 22, 25, 28, 29, December 2, 5, 6, 9, 12, 13, 16, 19, 20, 23, 26, 27, 30, 1968, January 2 and 3, 1969.

EMPLOYEES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

An agreement between the parties, effective September 1, 1949, as amended and supplemented, is available to your Board and by this reference is being made a part hereof.

This claim was timely filed, progressed under the provisions of the Agreement to the highest officer designated by the Carrier to receive appeals, including conference, and has been denied. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose when, in the absence of an emergency, Carrier required Claimant to suspend work on his regularly assigned position in order to fill another position beginning on October 3, 1968 and continuing through January 3, 1969. A period of three months.

Reference is made to your letters dated October 11, 15, 18, 25 and November 5, 1968 declining claims presented by Agent-Operator R. E. Carter, Davis Jct., Illinois for dates October 3, 4, 10, 11, 14, 17, 18, 21, 24, 25, 28, 31 and November 1, 1968.

Claims were presented for eight hours for each day claimed in addition to time paid account Carrier requiring Carter to suspend work on his regular assignment in violation of Rules 9 (d), 14 (b) and Rule 24 of the Agreement.

Claim is supported by recent Board Awards 15541, 16492 and 16664. It is the opinion of this organization that the claims are properly stated and in conformity with the mentioned awards.

The declination of the Chief Dispatcher is respectfully declined and the claim will be handled on appeal in accordance with the agreement.

Very truly yours,

/s/ M. E. Meyers
M. E. Meyers,
Dist. Chairman, TCU"

[Letterhead of]

"TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

November 12, 1968

CLAIM: Carter

Mr. L. H. Walleen
Superintendent
CMStP&P R.R. Co.
Savanna, Illinois

Dear Sir:

The following claim is submitted to you on appeal:

STATEMENT OF CLAIM:

1. Carrier violated the terms of the Agreement when it required Agent-Operator R. E. Carter, relief employe, Davis Jct., Illinois, to suspend work on his regular assignment and perform relief work on October 3, 4, 10, 11, 14, 17, 18, 21, 24, 25, 31 and November 1, 1968 and for each subsequent day of violation.

2. Carrier shall compensate Mr. Carter for eight hours at the pro rata rate of his regular position for each day of violation, while being required to suspend working his regular assignment.

STATEMENT OF FACTS:

Mr. Carter is the duly and regularly assigned relief operator at Davis Jct., with assigned hours of service on Saturday and Sunday 7 A. M. to 3 P. M., Monday 3 P. M. to 11 P. M. and Thursday and

Employee Meyers was not required to fill the agent's position at Davis Junction, Illinois within fifteen days of his appointment thereto, as contemplated by the provisions of the aforementioned rule, because he was filling a temporary assignment on bulletin.

Inasmuch as Employee Meyers was not available to fill the position to which he was the successful applicant, and with no qualified extra telegrapher available to work the agent's position, the Carrier had no other alternative but to continue with the aforementioned arrangement of using Claimant Carter Monday through Friday on the agent's position in addition to paying overtime, not only to claimant but also to the 2nd trick operator and 3rd trick operator for services rendered on their assigned rest days.

The aforementioned arrangement lasted until a new employee was hired on January 4, 1969. The employee hired to fill the agent's position happened to be an ex-telegrapher who was able to fill the agent's duties without any difficulty.

While Claimant Carter was utilized in filling the agent's position during the period September 23 through January 3, 1969, he received a higher rate of pay, worked daylight hours (8:00 A.M. to 4:00 P.M.), worked at the same location and worked all his rest days for which he was paid the time and one-half rate.

During the same referred-to period (September 23 through January 3, 1969) the 2nd and 3rd trick operators at Davis Junction, Illinois each worked their assigned rest days and were paid at the rate of time and one-half for such service performed on their rest days.

During that same period the Carrier made every effort to hire new agents-operators, as will be evidenced by the foregoing explanation and Carrier's Exhibits C-1, C-2, C-3, C-4 and C-5, but to no avail.

Attached hereto as Carrier's Exhibits are copies of the following:

CARRIER'S EXHIBIT F - Letter written by Mr. L. W. Harrington, Vice President-Labor Relations to Mr. W. E. Waters, General Chairman, under date of March 14, 1969.

CARRIER'S EXHIBIT G - Letter written by Mr. L. W. Harrington to Mr. W. E. Waters under date of March 27, 1969.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was the regularly assigned occupant of relief operator position at Davis Junction, Illinois, assigned to fill third trick operator's position, 12 Midnight to 8:00 A.M., on Thursday and Friday; the agent's position, 8:00 A.M. to 4:00 P.M., on Saturday and Sunday, and second trick operator's position, 4:00 P.M. to Midnight, on Monday.

The agent at Davis Junction made application for and was awarded position of agent at East Moline, Illinois. There were no qualified extra telegraphers available to work the agent's position until such time as it could be filled under the provisions of the Agreement. Claimant was utilized to fill the agent's position through January 3, 1969. The Petitioner contends that this resulted in his being required to suspend work on his assignment three days each week, Monday, Thursday and Friday. The Carrier

contended on the property that its actions were proper under the provisions of Rule 14(b) of the applicable Agreement, which rule reads in part:

"(b) Regularly assigned employees shall not be required to perform relief work except in cases of emergency."

The record shows that there had been a chronic shortage of qualified telegraphers throughout Carrier's property for some time. We must, therefore, determine whether or not the shortage of extra telegraphers in the present case constituted an emergency as referred to in Rule 14(b). This Board has defined an emergency as an unforeseen combination of circumstances which calls for immediate action. (Awards 10965, 16454.) We cannot find, under the facts as shown by the record, that an emergency existed as contemplated by Rule 14(b). Therefore, the Carrier's actions were not authorized under that rule.

Awards 16492, 16594 and 16664 have decided similar disputes between the same parties in which it was held that Claimants were improperly suspended from work under the terms of Rules 9 and 14. We agree with the reasoning of those Awards and find that the Agreement was violated.

The Carrier has objected to that portion of Item 1 of the claim reading "subsequent dates" and to Item 3 of the claim, contending that it was not properly handled on the property under the provisions of Article V of the Agreement of August 21, 1954; Section 3, First (i) of the Railway Labor Act, and Circular No. 1 of the Board. We find that the claim was properly handled as a "continuing violation" under Article V of the Agreement of August 21, 1954. However, the record shows that the claim for November 17, 1968, was never at issue on the property. The claim for that date will be dismissed.

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

Claim sustained for all dates except for November 17, 1968.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1970.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.