



Award No. 18319  
Docket No. TE-18557

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John H. Dorsey, Referee

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC**  
**ERIE-LACKAWANNA RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Erie Lackawanna Railroad, that:

1. Carrier violated the Agreement between the Transportation-Communication Employees Union (formerly the Order of Railroad Telegraphers) and the Erie Lackawanna Railroad Company, by failing to call Operator J. L. Burdg to fill vacancy at Hammond Drawbridge on First Trick, Monday, November 6, 1967.

2. Carrier shall because of this violation, compensate Operator J. L. Burdg for eight (8) hours at time and one-half rate of his regular position First Trick at Hammond Drawbridge.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) STATEMENT OF THE CASE**

An Agreement between the parties, effective March 1, 1957 as amended and supplemented is available to your Board and by this reference is 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.

The cause of this claim is Carrier's refusal to permit Claimant to work on one of his rest days, November 6, 1967, alleging that to do so would result in a violation of the Hours of Service Law.

**(b) ISSUE**

May Carrier depend on the Hours of Service Law to deny an employee compensation for work denied him?

**(c) FACTS**

This claim arose at Hammond Drawbridge, Hammond, Indiana, where Claimant is the regularly assigned incumbent of a five-day per week assign-

**OPINION OF BOARD:** Claimant was regularly assigned as Operator at Hammond Drawbridge, with rest days Monday and Tuesday. His rest days were part of a regular rest day relief assignment. On Monday, November 6, 1967, one of Claimant's rest days, the occupant of the relief assignment was not available and there was no extra employee available. Instead of using Claimant to work on his rest day, Carrier used another employee from a different location who was also observing a rest day.

It is the contention of Petitioner that Claimant, as the regular employee, was contractually vested with the right to work the position on his November 6, 1967 rest day in the absence of the regular relief employee or an available extra employee.

In its initial declination of the claim Carrier gave as reason:

" . . . Operator Burdg worked nine hours and 20 minutes on November 5th and, consequently, was not rested to cover this assignment."

In its appeal from that declination Petitioner stated:

"We fail to see how Carrier's use of Mr. Burdg nine hours and 20 minutes on November 5th has anything to do with his right to work on November 6, 1967."

Carrier's highest officer declined the claim, after conference, in these words:

"This will confirm it is Carrier's position this claim is without merit and rules support, **this for the reason that Claimant was not available under the Hours of Service Law for work on the involved date. . . .**" (Emphasis ours.)

The sole issue, thus framed, is whether Carrier was legally barred by the Hours of Service Law from assigning Claimant to the vacancy on November 6, 1967, Otherwise stated, was Claimant **de jure** unavailable to work the position.

Taking judicial notice of the Hours of Service Act, approved March 4, 1907, we find therein, in Section 2, the specifics of the Act's restraints as to Operators' hours of service:

"SEC. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: **PROVIDED, That no operator, train dispatcher, or other employee who by use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders**

pertaining to or affecting train movements, shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period in all towers, offices, places and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four hour period on not exceeding three days in any week." (Emphasis ours.)

The position taken by Carrier is without statutory support. We will sustain the Claim.

**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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago this 4th day of December 1970.