



Award No. 18783

Docket No. TE-19053

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

ILLINOIS CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Illinois Central Railroad, T-C 5771, that:

1. Carrier violated and continues to violate the Telegraphers' Agreement when it requires "swing operator" R. D. Beard (assigned to Relief Position No. 28) to "suspend work during his regular hours" beginning April 27, 1969 at 12 Midnight and continuous daily to and including May 19, 1969, on the position of Third (3rd) trick at Alhambra Tower-Alhambra, Ill.

2. Carrier shall pay claimant R. D. Beard as required by and according to the rules of the current telegraphers' agreement (Rules 6, 7, 8, 10B, 13A, 20-L-6 and 24-H) for the violations occurring daily at Alhambra Tower-Alhambra, Illinois when it required Operator Beard to "suspend work" during his regular assigned hours on Relief Position No. 28 and to perform work as directed by carrier representative at Alhambra, Illinois according to message placed over the Signature of Chief Dispatcher J. W. Jerew on April 28, 1969.

EMPLOYEES' STATEMENT OF FACTS:

(a) Statement of the Case

The dispute involved here is based on provisions of the Collective Bargaining Agreement effective June 1, 1951, as amended and supplemented, between the Parties.

The instant claim arose because Carrier suspended the Claimant from his regularly assigned position, diverted him to another position and held him thereon for an extended period. The Employees contend that Carrier's action was in violation of the Agreement and that certain provisions of that Agreement require that the compensation requested be allowed. These provisions are set forth in Section (d) — Rules Relied On.

The complaint was timely filed and thereafter handled in the usual manner up to and including the highest officer designated by the Carrier to handle

The Saturday rest day of the first shift Operator position was filled by a relief operator from Gilman, Illinois; the other five rest days were filled by Claimant Beard.

On April 10, 1960, Third Shift Operator T. R. Rogers advised company officials in writing (Company's Exhibit A) that he intended to move to the extra board in accordance with Rule 24K of the Agreement. Rule 24K reads:

K. An employe holding an advertised position may upon written notice to the proper officer of the Carrier (copy to the Local Chairman), relinquish rights to such position and revert to the extra board, but may be required to continue on the assignment until it has been advertised, assignment made, and relieved by the newly assigned employe.

To comply with Mr. Rogers' notice a bulletin was issued April 15, 1969, to all Illinois Division Telegraphers advertising a permanent vacancy for the third shift operator's position at Alhambra. (Company's Exhibit B). In the meantime, Mr. Rogers was retained on his third trick position in accordance with the rule. On Sunday, April 27, 1969, Mr. Rogers failed without notice to fill the third trick position, and, indeed, he never returned to the service of the company. He subsequently submitted his resignation by letter postmarked May 14, 1969.

In view of the fact that Alhambra Tower was a busy location on the heavily travelled Springfield District, it was necessary that Mr. Rogers' position be filled immediately with a qualified telegrapher. There being no extra telegraphers available on the seniority district, it became necessary to fill the position from the employes working at Alhambra. The claimant, at the direction of the Chief Dispatcher J. W. Jerew, was accordingly used to fill the vacant third trick position starting April 27, 1969. Thereafter, the first trick operator worked his assignment six days per week, the second trick operator worked his assignment seven days per week and the claimant worked the third trick position seven days per week.

On May 29, 1969, the union filed claim in behalf of Mr. Beard and this claim has been handled in the usual manner prior to receipt by the Board. Copies of all correspondence are attached. (See Company's Exhibits C, D, E, F, G, H, I and J.)

(Exhibits not reproduced.)

OPINION OF BOARD: Alhambra Tower is a continuously operated telegraph office manned by three regular assigned employes whose rest days are provided by one regular assigned rest day relief employe who works five of the six rest days and another rest day relief employe who works the one remaining rest day.

Claimant Beard is the rest day relief employe who works the five days of rest day relief. His assignment is first shift on Sunday; second shift on Monday and Tuesday; rest days on Wednesday and Thursday; and third shift on Friday and Saturday.

Prior to the events giving rise to this dispute telegrapher T. R. Rogers was regularly assigned to the third shift. On April 8, 1969, Rogers notified Carrier that on April 10 he intended to relinquish his regular assignment and revert to the extra board. Rule 24K of the parties' agreement permits such

action. Thereafter, on April 15, Carrier bulletined the vacancy in accordance with Rule 24C.

Rule 24K provides that an employe who relinquishes his regular assignment may be required to continue work on it until the vacancy is bulletined and filled in accordance with the agreement.

On April 27, however, before the time for bulletin and assignment had expired, Rogers vacated the assignment, never worked again, and formally resigned on May 14.

At this point it is necessary to comment on the circumstances surrounding Rogers' failure to work on and after April 27. The record does not show that the Carrier affirmatively required him to remain on the job, as it could have done under Rule 14K. The employes do not make an issue of this point, but they contend that Rogers notified Carrier on April 20 that he would not work on the 27th. Carrier denies that it received any such notice, and contends that Rogers simply failed to report for work.

Unfortunately, this conflict in facts was not dealt with, or even mentioned, during the handling on the property. As we understand the situation, however, it is immaterial. Carrier must have had some prior knowledge that Rogers would not report for work on the 27th, because it arranged for Beard who lived some distance away, and who was not scheduled to work until 8:00 A. M. Sunday, to work the third shift in the absence of Rogers. No extra employe was available.

Thereafter, Beard was required to continue work on the third shift, including its rest days, up to and including Monday, May 19. The other employes, who otherwise would have been relieved for their rest days by Beard, were required to work such rest days.

The Employes disagreed with Carrier's handling, contending that Rule 24H provides other means of filling a short vacancy, and that since a shortage of extra employes is no emergency, Rule 13A prohibited the diversion of Beard from his regular assignment.

Carrier resists the claim on the grounds that Rogers' failure to work, aggravated by the shortage of extra employes, amounted to an emergency, therefore Rule 13A authorized the diversion of Beard.

It is well established by many awards of this Board that a lack of sufficient extra employes to meet normal requirements cannot be considered as an emergency within the meaning of rules like Rule 13A. See Awards 11044, 14378, 17737, 18157, 18331, for example.

While a sudden resignation may, under some circumstances, present an emergency within the meaning of rules such as 13A, we do not believe the action of Rogers, together with the lack of extra employes, and other circumstances shown by the record before us, can properly be so considered. As noted above, the Carrier surely had some prior knowledge of Rogers' intent not to work on April 27. It could, therefore, have at least attempted to fill the vacancy by some means sanctioned by Rule 24H, rather than by diverting the claimant from his assignment. See Award 10919 for a discussion of a resignation where a shortage of extra employes existed.

We must point out, however, that our holding here is based on the particular facts and circumstances of this case, and is not to be taken as a

hard and fast interpretation of the rules for other cases where the facts and circumstances may be different.

Although we must find that the Carrier violated the Agreement, we cannot sustain the monetary claim as presented. The prior awards in cases of this kind clearly hold that an employe improperly diverted from his position is entitled to the benefits of the applicable rules as related to his own position. See Award 18157 and those cited therein.

Beard's regular assignment included two days each week on the shift to which he was diverted. He was properly paid for those days during the period. The guarantees provided by Rules 8A and 10B do not apply to the employe's regular assigned rest days. We cannot see any justification for additional payment for these days in view of the fact that Beard was paid at the rest day rate for two days each week. There remain three days each week that Beard was entitled to payment under Rule 8A. No expenses are shown, and none will be allowed.

Therefore, in accordance with the foregoing Opinion, we will sustain the claim only to the extent of one day's pay at the straight time rate applicable to Claimant's regular assignment on each of the following eleven days: April 27, 28, 29, May 4, 5, 6, 11, 12, 13, 18 and 19, 1969.

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, 1945;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1971.