

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20150
Docket Number TE-20133

Irving T. Bergman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight **Handlers**, Express and
(Station **Employees** (formerly **Transportation-**
(Communication Division, **BRAC**)

PARTIES TO DISPUTE: (

(Maine Central Railroad Company
(Portland Terminal **Company**

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Transporta-**
tion-Communication Division, BRAC, on the Portland
Terminal Company, TC-5870, that:

Carrier violated Article 9 of the January 1, 1951 Agreement when they required claimant to perform work at third trick **Rigby** Telegraph Office on September 3, 1971, and also violated Article 15 when claimant **was required to move** from his regular assignment to cover this assignment at third trick **Rigby** Telegraph Office **and** violated Article 4 when claimant was not paid the days pay provided for on his regular assigned hours at his regular assigned location. Carrier shall be required to compensate **claimant** (B.L. **Corkrey**) eight hours pro rata rate Tower Two in addition to compensation paid him for working third trick **Rigby** Telegraph Office for this violation.

OPINION OF BOARD: Claimant was regularly to work the third trick at Tower Two. When he reported for work at his regular location, Carrier moved claimant to the third trick at the telegraph office to **cover** the vacancy created when the Carrier used the regularly assigned **employee** as a dispatcher to **cover** a vacancy in that position. The Carrier contended that this was an emergency because an available spare man was not qualified to cover the vacancy created and a regular **man** on **his** rest day was called but did not respond. The Carrier also argued that it maintained a sufficient **number** of spare men to meet the reasonable **demands** of the service consistent with the opportunity to provide spare **men** with enough work to **earn** a living. The Organization's **position is** that the facts do not add up to an emergency as provided by the Rules.

Article 4 provides in part that: "A regularly assigned **employee** shall receive one day's pay within each twenty-four (24) hour period, according to position occupied or to which entitled, if ready for service and not used,--."

Article 15 provides in part that: "A regularly assigned **employee** will not be required to perform service on other than his position except **in an emergency.**"

Article 35 provides in **part** that: "Sufficient spare **employees will** be supplied to meet all reasonable demands."

A number of prior Awards have reached the conclusion expressed in Award 17737, that: "The **nonavailability** of personnel for various reasons--is a constant, never ending situation, which **must** always be anticipated by Carrier."

An emergency is defined as an unforeseen combination of circumstances. The facts of this case do not meet the requirements of the definition.

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

The Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.