

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22185
Docket Number CL-22065

David P. Twomey, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees

PARTIES TO DISPUTE:

((The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8353) that:

"(1) The Carrier violated the Agreement at Grafton, West Virginia on September 2, 1974 (Labor Day Holiday), when it failed to afford B. L. Jones and P. W. Reed preference to perform the work required of their assigned positions in "GR" Relay Office, and

(2) Carrier shall, as a result, compensate Claimant B. L. Jones \$46.55, the pro rata daily rate of his position, for the Holiday of September 2, 1974, end

(3) Claimant P. W. Reed shall be compensated \$45.26, the pro rata daily rate of his position, for the Holiday of September 2, 1974."

OPINION OF BOARD: The Monongah Division timetable lists the three points located within the Grafton Terminal, with East Grafton and the "GN" Tower located some 2.2 miles from Grafton and its "GR" Relay Office, and D Tower located 0.1 miles west of the "GR" Relay Office. The "GR" Relay Office is a location where there exists tie Wire Chief-Block Operator positions performing continuous around-the-clock service. At the "D" Tower location there exists three Block Operator positions ("BS" positions) performing continuous around-the-clock service.

The Claimants, Mr. B. L. Jones and Mr. P. W. Reed, held regular assignments in the "GR" Relay Office. Mr. Jones held the first trick assignment as Manager-Wire Chief and Mr. Reed held the Third Trick assigned as Wire Chief-Operator. By notice dated August 30, 1974, the Carrier's Trainmaster issued the following directive concerning the Labor Day holiday:

ALL CONCERNED:

Between the hours 7:00 A.M. Monday, September 2, 1974 and 7:00 A.M. Tuesday, September 3, 1974, Grafton "GR" Relay Office will be closed, Westbound crews will pick up their clearance Porm A and orders at "D" Tower during these hours.

Be governed accordingly.

During the period in which the "GR" Relay Office was closed under the August 30, 1974 directive, Operations at "D" Tower handled the below listed duty for Westbound trains originating at Grafton, as follows:

Trains cleared at D Tower Sept. 2, 1974 GW Engine 3758-6952 3701-3767-4146 called for 3:10 PM, Conductor Goodwin, Engineer Cooper, no fireman 529001, Form "A" No orders, one message which stated - You 'have Hi Cube car3 in -your train. Form "A" Time OK 2:12 PM. Train departed D Tower 4:02 PM.

Train cleared at "D" Tower Grafton, W. Va., Sept. 3 1974 CI 97 called for 2:00 AX, Conductor Friend, Engineer Farr, No fireman 52802 Engines 3763-4153-4100-3724-3696, No orders, one message which stated - You 'have Hi Cube cars in your train. Signed SFM. Form "A" Time OK 1:47 AM. Train departed "D" Tower at 2:jj AX.

The Organization contends that the Claimants from the "GR" Relay Office normally, customarily and regularly performed the work in question until it was diverted to the "D" Tower for the 24-hour Labor Day Holiday. The Organization contends that on the facts of this case Rule 4(b-2) of the Agreement was violated.

The Carrier contends that no work exclusively assigned to the Claimants was performed on September 2, 1974; that the GR Relay Office was closed on the holiday, and no employee entered the office to perform work. The Carrier contends that no Wire Chiefs' work was performed by any employee on this date. The Carrier contends that there is no rule,

in the June 4, 1973 Agreement which prohibits the Carrier from issuing orders to **train** crews through **an open** telegraph office. The Carrier contends that even had the Claimants been used to **perform** the work on the holiday, they would have been due but four hours' pay **under** Rule 8(c). The Carrier contends that no work was **performed** by the **Operators** at either **"GN"** Tower or **"D"** Tower that belonged to the Claimants. The Carrier **contends** that the work of handling Train Orders **was common** to the **assignments** of the Operators at **all** three towers at **Grafton**. The Carrier contends the claim is identical in principle to that involved in **Award 21944**, and that **both claims represent nothing more than** an effort on the **part of the** Petitioner to dictate which **tower** will be used to relay specific orders.

The burden of proof is **on** the Organization in the instant case. In the **General Chairman's** November 27, 1974 letter to the Director of Labor Relations, he asserted that the work in question **was normally, regularly and** exclusively performed by the **Claimants**, and called the Carrier's attention to the Carrier's August 30, 1974 directive. Referring to the September 10, 1976 letter of the Director of Labor Relations **declining** the claim after conference, there is no denial that Westbound crews on a regular work day pick up their clearance **Form A** and orders at the **"GR"** Relay Office. Nor did the Carrier state that the operators at **"D"** Tower, to **whom the** work **was** assigned on **Labor Day**, had in the past performed the specific work in question. The **September** September 10, 1976 letter does state in part:

"...While it **may well** be true that the **Claimants** on days that they work were **likewise** used to issue orders to crews there was nothing improper in having such work done by Operators at other towers on the date of the claim...."

While such a statement is ambiguous, it clearly is not a denial of the **specific factual assertions** of the **General Chairman** concerning the **handling of the work** in question. The Carrier offered no **explanation** for the **August 30, 1974** Notice closing the **"GR"** Relay Office for the **Labor Day** holiday, where it advised **that** Westbound crews would be **required to pick up** clearance **Form A** and orders at **"D"** Tower during the **holiday period**. Absent any contrary evidence or explanation, we find **that the work** identified in the **Notice**, which **was** assigned to **"D"** Tower for the holiday in question, was work **normally** and usually handled by the operators at the closed office. In the Carrier's **Submission** it is **stated**:

"As Carrier has **stated....None** of these towers is **allotted** specific train orders to **handle**."

Clearly there is **no** evidence in this record that the Carrier **made** such a statement on the **property**. And, the Carrier's **Submission** does not set forth **any** foundation **for** this assertion before the **Board**. As such **it cannot change** our **finding** that the Organization has **met** its burden of proof.

We find that the specific work **performed** by the operators at "D" Tower set forth previously is work which **on** a regular work day would have been performed by the **Claimants**. Since the work **on** a holiday of a position belongs to the regular **incumbent** of that **position** as work required on an unassigned day, we will sustain the instant **claims**. See Award 21944, **referred to in** the Carrier's Rebuttal, in which this Division recently sustained **that claim**. See also Public Law Board No. 153, Award No. 1.

The Carrier contends that the Claimants in any event **are** due but four hours' Day under **Rule** 8(c). We agree.

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.

A W A R D

Claim sustained, but for four hours' pay at the **time** and **one-half** rate of **pay**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.

