

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22212**
Docket Number CL-21921

James F. **Scearce**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station **Employees**
(
(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(**GL-8300**), that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when, on June 21, 1975, it required P. D. Graham, regularly assigned operator at Danville Junction, 11 P.M. to 7 A.M., to suspend work from his position to fill a vacancy on the third shift at **PT** Tower, **Rigby**, Maine, 11 P.M. to 7 A.M.

2. Carrier shall, as a result, compensate P. D. Graham eight (8) hours' pay at the pro rata rate of his regular assignment at Danville Junction for June 21, 1975.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when, **on** July 12, 13 and 16, 1975, it required **P. B.** Timberlake, regularly assigned relief operator **at PT** Tower, **Rigby**, Maine, to suspend work from his position to fill a vacation vacancy on the second shift at **PT** Tower.

2. Carrier shall, as a result, compensate P. B. Timberlake eight (8) hours' pay at the pro rata **rate of** his regular assignment at **PT** Tower for July 12, 13 and 16, 1975.

CLAIM NO. 3

1. Carrier violated the Agreement between the parties when, on August 12, 1975, it required B. L. Corkrey, regularly assigned relief operator at **PN** Office-m Tower, **Rigby**, Maine, to suspend work from his position to fill a vacancy at PN Office, **Rigby**.

2. Carrier shall, as a result, compensate B. L. Corkrey eight (8) hours' pay at the pro rata rate of his regular assignment at PI Tower for August 12, 1975.

OPINION OF BOARD: In reference to Claim #1, Organization contends that the Carrier created the vacancy by permitting the incumbent of the third shift operator's position to be off for personal reasons and that such vacancy could have been filled by the incumbent of the first shift position, who was observing his **rest** day, at the overtime rate rather than divert the Claimant. A spare employe was used to fill the Claimant's position in his absence. Carrier contends that, as no qualified spare employe was available to fill the vacancy at P T Tower, an emergency existed as defined by the Note in Article 15 applied:

"NOTE: The term 'emergency service' as used in this Article includes the use of a regular qualified employee subject to this Agreement on another assignment account Carrier unable to cover such assignment due to lack of available qualified employees in the respective territories, after all applicable Articles of the Agreement have been exhausted in filling vacancy."

Organization contends all other applicable articles were not **exhausted** as required under Article 15.

In reference to Claim #2, Claimant was assigned to cover second shift assignment at P T Tower on July 12, 13 and 16, 1975 (in the absence of the regular second shift operator, who was on **vacation**) after the Carrier disqualified a new spare employe who had been initially assigned to fill the vacancy. Claimant's regular relief position was different shifts throughout the week, with Thursday and Friday as rest days. Carrier claims an emergency existed due to the inability of the spare employe originally assigned to perform the work and to a lack of other spare employes **not** otherwise assigned elsewhere; Carrier claims it thus handled the situation in accordance with Article 15 of the Agreement. Organization contends that: other spare employes who could have been diverted from other assignments as per Article 15, three regular operators who were observing their rest days could have been called, or the Carrier had the option of denial of the vacation of the incumbent of the position in the absence of viable alternatives.

Relative to Claim #3, Claimant was regularly assigned to a relief position, **working** either first and third shift on specific days at either **Rigby PN** Office or P T Tower, with Wednesday and Thursday as regular rest days. On Tuesday, August 12, 1975 (a day **Claimant** would regularly work third shift at P T Tower) incumbent operator on the first shift at **Rigby PN** Office was off due to illness. Claimant was required to work that vacancy and a spare employe was used to fill the Claimant's regular assignment. According to the Carrier, it assigned the Claimant due to a lack of availability of spare employes. The Organization contends that spare employes assigned to other **assignments** could have been diverted to this assignment, or that an operator regularly assigned to the second shift position at the P T Tower was observing his rest day on **August** 12, 1975 and could have been used instead, thus foreclosing the necessity of diverting the Claimant from his regular assignment.

The extensive arguments made as to the relative status of various provisions of the Agreement -- specific **vs** general, in this case notwithstanding, a careful analysis of the provisions, using Article 15 as the central focus, leads to the following conclusion, as to how the **assignments** in each of the Claims herein should be made:

"(1) **spare** work will normally be performed by spare **employees**; (2) when there are no idle spare employes to be used the Carrier will release a spare employe from a further notice vacancy and use him; (3) when there are no idle spare employes and no spare employes working on further notice vacancies (assigned to work until **further** notice), an available qualified employe may be used on his rest day; and (4) when there are no idle spare men, no spare men working further notice vacancies, and no regularly assigned employes to be used in rest day service, then, and only then, may the Carrier require a regularly assigned employe to give up his position to fill the vacancy."

While this method may be argued as onerous in its application, it encompasses the obligation as cited in Article 15, as this Article relates to the other provisions of the Agreement. Raving so stated, however, we must look to the Organization to substantiate

that there were either (1) idle spare employes, or (2) spare employes on other assignments capable of being assigned, **or (3)** other available regular employes on their rest days; additionally, these **conditions** must be substantiated timely and made a part of the claim. The record indicates that such obligations were not timely met at any point in the process. While the Organization correctly enunciated the proper process by which spare work is to be performed, it failed to buttress this by demonstrating proof of such viable alternatives to the Carrier's actions on the record.

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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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** not violated.

A W A R D

Claims are denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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