

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22435
Docket Number CL-22395

Abraham Weiss, 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 CLAM: Claim of the System **Committee** of the Brotherhood
(GL-8511) that:

(1) Carrier violated the **Agreement** between the parties when on the dates of August 5, 7, 12, 13, 14, 18, 19, 20, 21, 25, 26, 27, 28, September 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, October 14, 15, 21, 22, 27, 28, 29, 30, **November 10, 11, 12, 13, 24, 26, 27, December 1, 23, 24, 29, 1976 and January 19, 1977,** because of its requirement **and allowance** of a **regularly-assigned** Operator **performing** work on an assigned Train Dispatcher position to return to his Operator position weekly and work his Dispatcher's rest-days after having worked both preceding rest-days of his operators position, did cause the improper displacement and denial of rights of employees filling short vacancies, and

(2) Carrier shall, as a consequence, be required to compensate improperly-displaced employee A. R. **Brougham additional** compensation for the dates in question, as follow:

August 5 - 4 hours
August 12 - 4 hours
August 18 - 8 hours
August 19 - 4 hours
August 25 - 8 hours
August 26 - 4hours

September 1 - 8 hours
September 2 - 12 hours
September 8 - 8 hours
September 9 - 12 hours
September 15 - 8 hours
September 16 - 12 hours

September 22 - 8 hours
September 23 - 12 hours
September 29 - 8 hours
October 14 - 8 hours
October 21 - 8 hours
October 27 - 8 hours
October 28 - 12 hours

November 10 - 8 hours
November 11 - 12 hours
November 24 - 8 hours
December 1 - 8 hours
December 23 - 8 hours
December 29 - 8 hours
January 19 - 8 hours

and

(3) Carrier shall also be required to compensate improperly displaced employee M. D. Smith additional compensation for the dates in question, as follows:

August 19 - 4 hours	September 10 - 8 hours
August 26 - 4 hours	September 11 - 8 hours
September 2 - 12 hours	September 16 - 12 hours
September 3 - 8 hours	September 17 - 8 hours
September 4 - 8 hours	September 18 - 8 hours
September 9 - 12 hours	September 23 - 12 hours
September 24 - 8 hours	October 30 - 8 hours
September 25 - 8 hours	Nwember 11 - 12 hours
October 15 - 8 hours	November 12 - 8 hours
October 22 - 8 hours	Nwember 13 - 8 hours
October 28 - 12 hours	November 26 - 8 hours
October 29 - 8 hours	November 27 - 8 hours

And, in addition to the foregoing on behalf of Mr. M. D. Smith, the difference **in** compensation between the rate of pay-attached to RX Tower, the step-up position, and JD Tower, the position to which returned through such impropriety, for each date of August 7, **13**, 14, 20, 21, 27, 28, September 3, 4, **10**, 11, 17, 18, 24 and 25, 1976.

OPINION OF BOARD: **A reading** of the record **discloses** that during the period described in the Statement of Claim, Mr. **H. E. Bair**, regularly assigned Telegraph Operator at RX Tower, Baltimore, Maryland, 3:00 P.M. to 11:00 P.M., Sunday **through** Thursday (rest days Friday and Saturday), was used to fill a Train Dispatcher's vacancy at Baltimore, Maryland, on a position working 3:00 P.M. to 11:00 P.M., Friday through Tuesday of each week (rest days Wednesday and Thursday). On Wednesday and Thursday rest days of the dispatcher's position, Mr. Bair was permitted to work his own Telegraph Operator's position.

Claimant, **A. R. Brougham**, was regularly assigned as a Relief Telegraph Operator at **HX Tower**, Baltimore, Maryland, and was used to fill the second trick vacancy of Mr. **Bair** on Sunday, Monday and Tuesday of each week during the claim period.

Claimant, M. D. Smith, was regularly assigned as a Telegraph Operator at JD Tower, **Hyattsville**, Maryland, and was used to fill Mr. **Brougham's** vacancy on the days he was filling Mr. **Bair's** vacancy.

The claims as presented by **Mr. Brougham** and Mr. Smith contend that Mr. Bair should not have been permitted to work on his regular Telegraph Operator's position on Wednesday and Thursday during the period of the claim.

Rule 41, upon which Petitioner relies, lists under paragraph (e) thereof - which is applicable here - four (4) instances wherein a regularly assigned Telegraph **Operator** who performs extra work as a Train Dispatcher may not claim the right to work within the hours of his Telegraph **Operator's assignment**. None of those four (4) instances prohibits the type of situation **complained** of herein.

It may well be, as Petitioner contends, that the intent of the Agreement was to confine such **employees** to not more than five (5) **days' work** per week. However, the four (4) situations outlined in **Rule** 41(e) do not prohibit an **employee** such as Mr. **Bair** from claiming the right to work on his own regular Telegraph Operator's position as he did in this case. If the framers of the **Rule** had intended that an **employee** be denied the right to work his own position in circumstances such as we have here, then another or different prohibition would have been included in **Rule** 41(e). This Board **cannot**:

" . . . inject our **predilictions** as to what is fair, just and equitable. Nor can we engage in speculation as to what might have been in the minds of the parties, but not evidenced in the Agreement as executed, or otherwise proven." (Third Division Award No. 12558, Referee **Dorsey**)

We **may** not add the additional prohibition to the **Rule**, under the guise of interpretation. The claim herein **must** be denied.

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 apprwed 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of **June 1979.**

JUL 17 1979
NATIONAL RAILROAD ADJUSTMENT BOARD