

Award No. 1526  
Docket No. TE-1599

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
BOSTON AND MAINE RAILROAD

**STATEMENT OF CLAIM:** "Claim of General Committee of the Order of Railroad Telegraphers on the Boston and Maine Railroad that Rule 13 (e) of the existing Agreement, dated July 1, 1939, was violated when S. R. Stillings, the senior available spare employe was not used to cover a spare vacancy at Ipswich, Mass., instead of H. M. Roberts, a Permanent Agent, who was taken from Seabrook, N. H., and sent to Ipswich, Mass., while the senior spare employe was sent to Seabrook, N. H., in place of Agent Roberts.

"Claim is made for the difference in the hourly rate of the two positions. Seabrook, N. H., paid 69¢ per hour and Ipswich, Mass., paid 80¢ per hour.

"This claim is for the period October 29, 1940, to January 4, 1941, inclusive, the total amount of claim—\$46.64."

**JOINT STATEMENT OF FACTS:** "There is in existence an Agreement between the Boston and Maine Railroad and the Order of Railroad Telegraphers containing 'rules applicable to employes in station, telegraph and signal tower service and wage table revised effective July 1, 1939,' which was in effect during the period covered by this claim.

"S. R. Stillings was a spare, or extra, Telegrapher on the Portland Division. He was assigned to cover the agency of Rowley, Mass., October 28, 1940, and to cover the agency at Seabrook, N. H., October 29, 1940, until further notice. The hourly rate at Seabrook is 69¢.

"H. M. Roberts, the regular Agent at Seabrook, N. H., was sent to Ipswich, Mass., to cover a spare assignment as Agent commencing October 29, 1940, until further notice and he remained on that position until January 4, 1941, inclusive. The hourly rate at Ipswich, Mass., is 80¢ per hour.

"This claim has been handled in orderly procedure between the representatives of the Organization and of the Carrier and has been declined."

**POSITION OF EMPLOYES:** "This claim is based on the using of a regular assigned permanent Agent to cover spare work where there is no emergency involved.

"The Emergency Rule No. 15 of the Agreement dated July 1, 1940, provides that 'Regularly assigned employes as per Rule 1 will not be required to perform relief work except in cases of emergency.'

"In this contention we will show the Board that there was no emergency and that this work should have been assigned to the senior spare employe who was available at the time of the vacancy.

"In handling the case on the property, the Telegraphers' Committee have referred to Award No. 253, Docket TE-183, Third Division, National Adjustment Board. This is a case involving the Order of Railroad Telegraphers and the Southern Pacific Company (Pacific Lines) and was a claim for 12 days' time lost by a Telegrapher who was not allowed to do spare work when available and competent, the work being covered by a junior spare employe. The rules of the Agreement and the circumstances are not at all like this claim of Stillings.

"They also call attention to Award No. 508, Docket TE-485, Third Division, National Railroad Adjustment Board, dispute between the Order of Railroad Telegraphers and the Missouri Pacific Lines in Texas and Louisiana. This, too, is a case where a junior extra or spare employe was given the work in place of the senior available spare or extra employe and the man who was senior did not work at all for 19 days.

"In this case, too, the rule is different than in the Boston and Maine Agreement;—The circumstances are so different that Award No. 508 should have no bearing.

"The third case cited by the Telegraphers' Committee is Award No. 727, Docket TE-725, Third Division, National Railroad Adjustment Board, dispute between the Order of Railroad Telegraphers and the Chicago, Rock Island and Pacific Railway and the Chicago, Rock Island and Gulf Railway.

"This, too, is a case of a junior spare or extra Telegrapher being used instead of the senior spare or extra Telegrapher who was available, the senior man not working at all during the period of the claim. The rules and the circumstances are not comparable to those covered by this submission."

**OPINION OF BOARD:** The record in this case discloses the parties to be in agreement that a spare vacancy existed on the position of Agent at Ipswich, Mass., during the period, October 29, 1940, to January 4, 1941, inclusive. The question presented by the claim is whether senior available spare employe or an employe regularly assigned was entitled to this spare vacancy during that period.

The rules applicable to the circumstances thus presented provide that preference should have been given to senior competent spare employe. Such spare employe on the Portland Division should have been used and such employe now is entitled to the difference between that which he would have earned on the spare assignment at Ipswich for the time entitled by the rules to have worked thereupon at the rate of 80¢ per hour and that which he did earn upon other assignments which he may have had during this period when his rights entitled him to occupy the spare vacancy at Ipswich.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 under the circumstances of this case senior competent spare employe on the Portland Division should have been used, and such employe now is entitled to the difference between that which he would have earned on the spare assignment at Ipswich for the time entitled by the rules to have

worked thereupon at the rate of 80¢ per hour and that which he did earn upon other assignments which he may have had during this period when his rights entitled him to occupy the spare vacancy at Ipswich.

**AWARD**

Claim sustained in accordance with the Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 25th day of July, 1941.