

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Le Roy A. Rader, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad that W. E. Bower was used as an extra employe to fill the vacancy of Leverman 10:00 P. M. July 17th, to 6:00 A. M., July 18th, 1946, after having completed his regular assignment as Leverman, "A" Tower, 2:00 P. M. to 10:00 P. M., W. E. Bower was unable to cover his regular assignment due to insufficient rest and his position was filled by an Extra Employe. Request is hereby made that W. E. Bower be compensated as Leverman "A" Tower, 2:00 P. M. to 10:00 P. M., July 18th, 1946. Article V, Section 5.

**EMPLOYEES' STATEMENT OF FACTS:** On July 17, 1946, W. E. Bower, held regular assignment, 2:00 P. M. to 10:00 P. M., as Leverman, and K. S. Harper, held regular assignment 10:00 P. M. to 6:00 A. M., as Leverman, "A" Tower, Philadelphia, Pa.

Harper on that date, reported off duty because of illness, and as no extra employe was available to cover Harper's vacancy, Bower was therefore required to work through in place of Harper until 5:55 A. M., July 18th, when he was instructed to mark himself off duty. He was compensated at the punitive rate of Leverman for the second tour of duty.

Following his release from duty at 5:55 A. M., July 18th, Mr. Bower indicated he would not be rested in time to resume his normal assignment at 2:00 P. M., and would require ten (10) hours off duty so as to secure proper rest and would be available at 4:00 P. M. As a result his regular assignment 2:00 P. M. to 10:00 P. M., July 18th, was filled by an extra employe.

Bower filed time slip for his regular assignment 2:00 P. M. to 10:00 P. M., July 18th, because he was suspended from performing service. This time slip was denied.

The Local Chairman made request that Bower be compensated as Leverman for his tour of duty 2:00 P. M. to 10:00 P. M., July 18th, and this claim was discussed with the Superintendent at regular monthly meeting held on August 6th, and denied by the Superintendent in letter to the Chairman dated September 12, 1946. The provisions of Article V, Section 20 was complied with by both parties.

**POSITION OF EMPLOYEES:** There is an Agreement in effect between the parties to this dispute, Rules and Rates of Pay effective May 16, 1943.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

### CONCLUSION

The Carrier has shown that the Claimant was not required by any action of the Carrier to suspend work from his regular assignment on July 18, 1946, and, therefore, is not entitled to the compensation claimed under the provisions of the applicable Agreement.

It is, therefore, respectfully submitted that the claim is without foundation under the applicable Agreement and should be denied.

**OPINION OF BOARD:** The claim, rules of the Agreement, provisions of the Hours of Service Act, contentions and arguments of the parties, relating to their respective positions, are fully set out in the submissions presented.

An interpretation of Article V, Section 5, Part II, and the first part of Section 2 of the Hours of Service Act, is involved, as the same might apply to the fact situation in this case.

The facts, which are not in dispute, are that Claimant W. E. Bower, Leverman, worked his regular assignment, "A" Tower, 2:00 P. M. to 10:00 P. M. on July 17, 1946. By reason of illness of the Leverman, who was to come on duty at 10:00 P. M. on said date, it was necessary that Claimant continue on to 5:55 A. M. on July 18, 1946. When he went off duty he stated that he would not have sufficient rest to resume his regular assignment at 2:00 P. M. on said date, but would require 10 hours for proper rest and would return at 4:00 P. M. The Carrier used an extra employe on the 2:00 P. M. to 10:00 P. M. tour of duty.

Article V, Section 5, Part II, provides:

"Employes shall not be required to suspend work during regular hours, nor shall they be required to suspend work for the purpose of absorbing overtime."

The pertinent part of Section 2, of the Hours of Service Act, as it applies to this controversy provides:

"That it shall be unlawful for any common carrier, \* \* \* to require or permit any employe \* \* \* to be or remain on duty for a longer period than sixteen consecutive hours, \* \* \* he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty \* \* \*."

Carrier contends that Claimant was never informed not to appear for his regular assignment on July 18, 1946.

While the approach used by the Carrier is technical, based on previous instructions, relative to the sixteen consecutive hour provision of the Hours of Service Act, as shown by the record, yet, based on the record made in this case, such practice takes the present fact situation outside of the provisions of Section 2 of the Hours of Service Act.

Also, Claimant by his statement when going off the tour of duty at 5:55 A. M. on July 18, 1946, took himself out of the provisions of the rule of the

Agreement cited. While there is merit in Claimant's contentions herein, a strict construction of the Agreement defeats his claim.

**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 Employees 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 Carrier did not violate the Agreement.

**AWARD**

Claim denied.

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

**ATTEST:** A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1949.