

Award No. 4592
Docket No. TE-4520

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee on the Delaware, Lackawanna and Western Railroad that P. J. Gillespie, who was regularly assigned to Cycle Position No. 2, home station Cayuga, and who was diverted to Bridge-60, December 20 through December 31, 1947, pursuant to Article 15 of the Telegraphers' Agreement shall be allowed:

1. Time and one-half rate instead of straight time rate for services performed December 22 and 29, 1947.
2. A day's pay at the rate of his regular position (Cayuga) instead of no pay on December 26, 1947, and
3. Bus fares, as claimed, totalling \$1.76, covering necessary transportation during the eleven-day period he performed relief service at Bridge-60.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of November 1, 1947 and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

P. J. Gillespie, regularly assigned to Cycle Position (Relief Position) No. 2, was diverted therefrom December 20 through December 31, 1947, to third trick position at Bridge-60 because of the illness of the incumbent of the latter position. Mr. Gillespie's regular position, rest day, and rates of pay are reflected to the left next below; his services and rate of pay at Bridge-60 to the right:

Relief Cycle No. 2				Bridge-60			
Dec. 20	Sat.	Clark Summit	4 PM-12 M.	\$1.305	an hour	11:30 PM-7:30 AM	\$1.38 an hr.
" 21	Sun.	Cayuga	4 PM-12 M.	1.255	"	"	"
" 22	Mon.		REST DAY				
" 23	Tues.	Cayuga	12 M. - 8 AM	1.255	"	"	"
" 24	Wed.	Clark Summit	12 M. - 8 AM	1.305	"	"	"
" 25	Thurs.	Clark Summit	8 AM- 4 PM	1.305	"	"	"
" 26	Fri.	Cayuga	8 AM- 4 PM	1.255	"	"	"
" 27	Sat.	Clark Summit	4 PM-12 M.	1.305	"	11:30 PM-7:30 AM	"
" 28	Sun.	Cayuga	4 PM-12 M.	1.255	"	"	"
" 29	Mon.		REST DAY				
" 30	Tues.	Cayuga	12 M. - 8 AM	1.255	"	"	"
" 31	Wed.	Clark Summit	12 M. - 8 AM	1.305	"	"	"

The Carrier allowed to Claimant Gillespie only straight time rate for services performed on his rest days, viz., Mondays, December 22 and 29.

the initial and final trip. Gillespie, who resides in the city of Scranton, Penna., was not actually put to any additional expense as the result of his working at Bridge 60 Tower Scranton rather than at Cayuga Tower as both are located within the city area of Scranton, Penna. Under the circumstances, claim for bus fare is not in order as it is not supported by rule or practice.

Agreements should be construed to prevent "wasteful application of the revenues of the railroad." See Award 2012, Third Division.

For reasons above stated, this claim in its entirety should be denied.

OPINION OF BOARD: Claimant was regularly assigned to Cycle Position No. 2 at Cayuga, New York, with Monday assigned as his day of rest. This was a relief position with varied daily assignments and rates of pay. He was directed to work the third trick position at Bridge-60 from December 20 through December 31, 1947, because of the illness of the occupant of that position. The latter position was also a relief position with Friday assigned as the rest day. No complaint is made of the Carrier's action in assigning Claimant to relieve the third trick operator at Bridge-60. It is mutually agreed that Claimant is entitled to be paid the higher rate of the two positions. No question of travel time is involved as it has been paid in accordance with applicable rules. The dispute involves the application of the rest day rule to the situation here existing and whether Claimant is entitled to reimbursement for bus fares expended in traveling from Cayuga to Bridge-60 and return each day.

The applicable portions of the controlling rule provide:

"Employes holding temporary or regular assignments will not be required to do relief work except in cases of emergency. When required to perform such emergency service, employes shall be paid the higher rate of the two positions, and in addition shall be allowed actual necessary expenses incurred for lodging and meals, and shall be paid at the straight time rate at (as) that paid for the day for time consumed traveling between the temporary or regular assignment and the emergency assignment.
* * *

No time shall be lost because of this emergency service, and in no case will less than one day's pay be allowed for each twenty-four hours held away from regular or temporary assignments."

Article 15, current Agreement.

The record shows that if Claimant had worked his regularly assigned position from December 20 through December 31, 1947, he would actually have worked ten days and had two days of rest. During this period, he actually worked eleven days at Bridge-60 and had one rest day. Claimant now contends that he is entitled to the time and one-half rate for working the two days assigned as rest days on his regularly assigned position and that he is entitled to a day's pay for not being permitted to work on the rest day assigned to the third trick operator's position at Bridge-60 which was actually worked by the regularly assigned relief man for that position.

Claimant contends that the rest day follows the employe under the facts here shown and that Monday remained his rest day during the time he relieved the third trick operator at Bridge-60. Such is not the case. The rest day attaches to the position. It is designated by bulletin before the employe bids it in. It is incidental to the position and not the employe. Consequently, when Claimant was properly directed to relieve the third trick operator at Bridge-60, he was obliged to work the position as he found it. He must accept the rest day there assigned, for most often, as was the case here, the work to be performed on the rest day has been assigned to a relief man for performance.

The Organization argues that instances can arise whereby an employe can lose work if such an interpretation is adopted. We think that other provisions of the rule protect the employe against any such result. We call

attention to that part of Rule 15 stating that "in no case will less than one day's pay be allowed for each twenty-four hours held away from regular or temporary assignments." Clearly this means that if an employe loses a day's work because he is required to perform emergency relief work, the Carrier is required to compensate him therefor. But in the case before us, Claimant worked one more day at Bridge-60 than he would have worked on his regular assignment. Consequently, this provision gives him nothing in the present case.

He is further protected by the provision in Rule 15 that "no time shall be lost because of this emergency service." This simply means that he is guaranteed at least as much as he would have earned on his regularly assigned position. But in the instant case he earned \$126.96 exclusive of travel time and expenses. During the same period he would have earned \$107.62 on his regularly assigned position. Consequently, he can gain nothing by this portion of the rule.

We are of the opinion that Claimant has been correctly compensated for the work he performed at Bridge-60.

Claim is made for bus fares expended for traveling between Cayuga and Bridge-60 during this period. The applicable rule states:

"Regular relief assignments will be concentrated as much as practicable, consistent with train service, and to avoid unnecessary travel. Free transportation for necessary travel in providing relief will be made available to relief employes. * * *

The free transportation for relief employes provided for herein shall be free transportation only between the stations at which the relief employe performs service, unless otherwise agreed between the Management and the General Chairman." Article 3, Section 1(c), current Agreement.

The record shows that all of the emergency relief work performed by Claimant was performed at Bridge-60. His regular assigned home station was Cayuga. The rule requires the furnishing of free transportation between the stations at which the relief employe performs service. While these two stations are within the same city, this is not a controlling factor. It is transportation between stations and not cities that is to be furnished.

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 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 violated to the extent shown in the Opinion.

AWARD

Claim (1) denied. Claim (2) denied. Claim (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.