

Award No. 4956
Docket No. TE-4841

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad that:

1. The Carrier violated the provisions of the Telegraphers' Agreement when and because on May 3 and 4, 1947, it required Agent-Operator G. H. Holleran, Chenango Bridge, New York, to perform relief service at Chenango Forks Tower;
2. The Carrier shall now pay to each G. S. Hill and R. R. Whalen, regular second and third trick towermen at Chenango Forks, four hours at time and one-half rate on each, May 3 and 4, 1947, for work denied; and
3. The Carrier violated the provisions of the Telegraphers' Agreement when and because it blanked the agent-operator position at Chenango Bridge on May 3, 1947; in consequence thereof said Carrier shall now pay to the senior extra employe who was not working on that date one day's pay at the Chenango Bridge agent-operator rate.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, hereinafter referred to as the Telegraphers Agreement and bearing an effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board. The exceptions to the foregoing statement are that effective March 1, 1945, Rules 8 and 23 became null and void, and in lieu thereof Articles 8 and 24, as incorporated in the November 1, 1947 Agreement, became effective. Copies of this latter Agreement are also on file with the National Railroad Adjustment Board.

On the dates involved here G. H. Holleran was regularly assigned to the six-day agent-operator position at Chenango Bridge. His assigned hours and days were 8:00 A.M. to 5:00 P.M. (one hour for lunch) Monday through Saturday. Sunday was the rest day.

Chenango Forks Tower is an around-the-clock 7-day operation. On the dates involved here W. H. Neff was regularly assigned 8:00 A.M. to 4:00 P.M.; R. R. Whalen 4:00 P.M. to 12 Midnight; and G. S. Hill 12 Midnight to 8:00 A.M.

According to the Carrier's records, when this case was handled on the property in 1947, the Employees requested and were furnished with information concerning the availability of extra men on May 3 and 4, 1947 and, with that information on hand when the case was progressed to the Chief Operating Officer, they failed to name any qualified extra employee available to work at Chenango Bridge on May 3, 1947. The Carrier contends under the circumstances it had the right to blank the position at Chenango Bridge in order to permit the use of G. H. Holleran at Chenango Forks.

When the case was progressed to the Chief Operating Officer under date of December 21, 1947, two rules were cited as having been violated, namely, Rule 15(a) of the Agreement of May 1, 1940, heretofore quoted, and Rule 18 of the May 1, 1940 Agreement which reads as follows:

"A temporary vacancy of three (3) days or less duration will be filled by the senior qualified employee not then employed, if available."

The Organization took the position in their letter to the Carrier on December 21, 1947, that no emergency existed under the application of Rule 15(a). If that is the Organization's position, the Carrier cannot understand the reason for progressing the claim in favor of Hill and Whalen.

Rule 18 would not be applicable here because the vacancy on the first trick at Chenango Tower extended beyond the period of three days. Holleran covered the position for two days only, the day his job was blanked at Chenango Bridge and Sunday, the rest day of the Chenango Bridge position. In both instances there were no extra qualified men available to cover jobs at either Chenango Bridge on May 3, 1947 or Chenango Forks on May 3 and 4, 1947, and in the opinion of the Carrier, the use of Holleran at Chenango Forks on the date in question was permissible under the Telegraphers' Agreement and no penalty is justified.

For reasons stated above, it is respectfully requested that the claim be denied.

OPINION OF BOARD: Chenango Forks Tower is a continuous seven-day operation. W. H. Neff, who was regularly assigned from 8 A.M. to 4 P.M. was off duty on May 3 and 4, 1947. On the dates involved the Carrier assigned G. H. Holleran, who was regularly assigned to the six-day agent-operator position at Chenango Bridge, to relieve W. H. Neff at the Chenango Forks Tower.

No claim is presented to the Board on behalf of G. H. Holleran, although the Organization charges that the Carrier violated the Agreement in requiring him to perform relief service at Chenango Forks Tower.

The parties are in dispute as to whether an extra employee was available on these dates. The claim on behalf of the senior extra employee alleged to be available on these dates is based upon the blanking of Holleran's position at Chenango Bridge. This Board in Award No. 4552 stated:

"Under this rule Carrier may not blank a seven-day position in part or in whole but is required to fill it on each and every day. See Awards 2783, 3049, 3376, 3746, and 3814 of this Division. It cannot fill a temporary vacancy in a regular seven-day position, that is, one necessary to its continuous operation, with an employee regularly assigned to a six-day position, that is, a position not necessary to its continuous operation. See Awards 336 and 3770 of this Division. Such temporary vacancy should first be filled by extra, relief, or furloughed men and, if none are available, then a regular man who is off duty but available should be called and used to do the work. See Awards 2282, 2695, 3271, 3770, and 4179 of this Division."

The record does not permit determination as to whether a senior extra employe was available. This Board in Award No. 4460 stated:

"It is contended by the Carrier that there was no available extra man. The Organization contends that there was, but is unable to designate him or them for the reason, as it claims, that Carrier has refused to provide the information or make its records available to the Employees. In this connection, parties are required to present all the facts within their possession and, where either are required to present all the facts within their possession and, where either party refuses to do so, a remand ordinarily results if such evidence is necessary to a decision. Consequently, this case will be remanded for a joint check of Carrier's records. If it appears that there was a qualified and available extra employe on one or more of the days stated in the claim, the claim is sustained as to such employe for the days lost."

The claim on behalf of the senior extra employe must be remanded to the parties in order that they can make a joint check to determine whether there was an extra qualified man available. If this check determines that no extra qualified man was available then G. S. Hill and R. R. Whalen, the regular second and third trick tower men at Chenango Forks Tower should have been called and used to do the work on May 3 and 4, 1947, and each of these tower men shall be paid four hours at the pro rata rate. See Awards 3049, 3193, 4244 and 4467.

G. H. Holleran as a regularly assigned employe should not have been required to vacate his position because the undisputed evidence is that towerman Neff was on a vacation, and the relief of other employes for vacations is not an emergency situation. An extra employe, if available, should have been assigned to this work or the work should have been assigned to the regular towermen at Chenango Forks Tower by calling them to do the work.

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 Agreement was violated.

AWARD

Claim (1) sustained; claims (2) and (3) are remanded to the parties to comply with the procedures set forth in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of July, 1950.