Award No. 5172
Docket No. TE-4999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MAINE CENTRAL RAILROAD COMPANY

PORTLAND TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maine Central Railroad, that—

Operators B. J. Sirois and C. Crandlemire, at Clinton, shall each be paid four (4) hours' overtime on March 17, 18 and 19, 1949, account the second trick operator at Clinton, unable to work on these days because of sickness and a person not in the employ of the Carrier, under the Telegraphers' Agreement, used to work the full eight hours on the second trick position on each of these three days.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, bearing effective date of February 18, 1943, and referred to herein as the Telegraphers' Agreement, is in evidence; copies are on file with the National Railroad Adjustment Board.

Clinton is a continuously operated office. On the dates involved in this proceeding, Sirois occupied first trick, Young second trick and Crandlemire third trick. March 17, 18 and 19, 1949, Young was off duty because of illness. A qualified extra employe was not available to protect the vacancy. A Mr. D. E. Carter, who is engaged in a soft-drink business at Newport, and who is not an employe of the Carrier, was used to protect Young's vacancy, instead of permitting each, Sirois and Crandlemire, to work four hours at overtime rate on each of the days involved.

Claims were made on behalf of Sirois and Crandlemire. The Carrier denied said claims.

POSITION OF EMPLOYES: As briefly indicated in the Employes' Statement of Facts, Clinton is a continuously operated office, with Sirois, Young and Crandlemire owning and occupying, respectively, the first, second and third tricks, or tours of duty. Because of illness, Mr. Young reported off duty, March 17, 18 and 19, 1949. Extra employe, Dunn, was available to protect Young's vacancy, but the Carrier held that he was not qualified to work the position. Thereupon, instead of using Sirois and Crandlemire for overtime service, the Carrier chose to go outside of the Telegraphers' Agreement and arranged for one, D. E. Carter, a former employe, who had resigned from Carrier's service long since, and who is in the soft-drink

ployes and Management" which the Committee may properly progress with the Carrier under the provisions of Rule 19.

The Carrier respectfully submits this claim is not properly before your Board and should be dismissed. The employes involved are barred by laches. The General Committee is estopped from progressing a grievance where none exists.

OPINION OF BOARD: On the days here involved, the second trick telegrapher at Clinton was off duty because of illness. A qualified extra employe was not available. The Carrier used a former employe to protect the vacancy. The occupants of the first and third tricks claim that they should have been used for four hours each at the overtime rate.

It is a fundamental rule that work of a class covered by an agreement belongs to those for whose benefit the contract was made. A delegation of such work to others not covered by the agreement is violative of the agreement. Under the rules, such work must be given to available employes within the agreement, even though overtime results, before it can be assigned to one outside the agreement, Awards 3955, 2706. The Carrier violated the agreement when it used a former employe who had severed the employer-employe relationship by resignation.

It is asserted, however, that there was no qualified employe available. The Organization claims that the occupants of the first and third tricks should have been used four hours each on overtime. The Carrier contends that this could not be done because of the Hours of Service Law.

The effect of the Hours of Service Law on a situation such as we have here has been considered previously by this Board. Awards 2827, 3609, 4645. We shall not again review the effect of the Hours of Service Law, except to state, under the authority of the three cited awards, that illness constitutes an emergency and that claimants could work four hours overtime without violating that law. We hold that claimants should have been so used.

Carrier contends that the claims were not properly made by the Organization because they were not personally filed. There is no merit in this contention. See Awards 4456, 2933, 2240.

The claims will be sustained at the pro rata rate. Awards 4244, 4571, 4645.

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.

AWARD

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1950.