

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
THE DELAWARE AND HUDSON RAILROAD CORPORATION

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware & Hudson Railroad Corporation:

(1) That the Carrier violated the terms of the Telegraphers' Agreement when it did not permit E. V. Colson the regularly assigned agent at Fort Ticonderoga, New York to work on this position on his rest day of Sunday, November 21, 1948, on which day neither the regular assigned relief employe nor an extra employe were available.

(2) That E. V. Colson, who was available but not used to work on his rest day of Sunday, November 21, 1948, shall be compensated for eight hours at time and one-half which he would have earned had he not been unjustly deprived of this work.

**EMPLOYES' STATEMENT OF FACTS:** An Agreement by and between the parties hereinafter referred to as the Telegraphers' Agreement, bearing effective date of July 1, 1944 (except as to subsequent wage adjustments) as amended November 1, 1946 is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Claimant E. V. Colson is the regularly assigned agent at Fort Ticonderoga, New York six days each week, Monday through Saturday, with Sunday having been assigned as his day of rest. This position of agent at Fort Ticonderoga is included in a relief assignment and claimant was regularly relieved by an assigned relief telegrapher when such employe was available.

During the period November 11 through Saturday, November 20, 1948, inclusive, claimant was granted his annual vacation. Sometime prior to Sunday, November 21, 1948 the regular assigned relief telegrapher had requested to be off duty for a few days and was therefore not available to provide rest day relief on the agency position at Fort Ticonderoga on that day.

The Carrier, instead of notifying Claimant Colson that the regularly assigned relief telegrapher was not available and that he work his rest day, wired Telegrapher J. T. Dunn, who was performing vacation relief on the Fort Ticonderoga agency, and asked him to remain on that position for one additional day, Sunday, November 21.

Telegrapher Dunn who worked the agency position at Fort Ticonderoga during this vacation period was the regularly assigned second trick telegrapher at Fort Ticonderoga.

trick position at Fort Ticonderoga on Sunday, November 21, 1948, were a part of the regular relief position owned by J. T. Colpoys. Mr. Colson did not have any assignment on Sundays. This was his established rest day. It is thoroughly understood that the primary purpose of the Rest Day Rule is to grant to each regular telegrapher one day of rest in each week. Carrier did not have an available extra telegrapher to use in place of the regular relief telegrapher and the vacancy was covered by Mr. Dunn. Mr. Dunn holds seniority on the same list as Messrs. Colson and Colpoys and was eligible for service on Sunday, November 21, 1948. Mr. Dunn's regular position was filled on November 21, 1948 by an Extra Telegrapher.

Award 4823 covered claim of regular Telegraphers for work on their rest days when such work was assigned to Extra Telegraphers. The following is quoted from the Opinion in Award 4823:

"The Organization contends that Article II, Section 2, current Agreement, has the effect of assigning the Sunday work here involved to these Claimants. Such is not the case. It simply provides that if employees within the classification under consideration are required to work on Sunday, they shall be paid in the manner therein stated. But it does not assign Sunday work to the occupants of the positions assigned six days with a Sunday rest day. We feel obliged to again point out that the motivating reason for the rest day rule was to afford one day of rest each week to employees. A penalty rate for working an employee on his rest day was established to coerce compliance with the rule. The intent of this rule and the objective sought by it should be carried out whenever possible. We think the spirit of the rule as well as the letter of it, requires the Carrier to use extra employees in preference to the occupants of the regularly assigned positions under the Agreement for rest day work when they are available, and thereby afford the occupants of six day positions the day of rest contemplated by the Agreement."

In the case at issue it was possible and practicable to give the regular Agent-Telegrapher his day of rest, which was done. While the position was not covered by the regular relief employee or an extra man, it was covered by another regular Telegrapher and the extra man covered the position of the regular Telegrapher. The extra man was not qualified to fill the Agent-Telegrapher position.

Carrier requests that claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The claimant was assigned the first trick Agent-Telegrapher position, seven days a week, with Sunday the assigned rest day. The second trick was assigned to Dunn. For the period of November 11 through November 20, 1948, the claimant was on vacation. During this time claimant's position was worked by Dunn, and Dunn's position was filled by an employee from the extra list who was not qualified for the Agent's position. November 21, 1948, was a Sunday and on this date the regular assigned relief was not available, nor was there any available qualified employee from the extra list. The Carrier instructed Dunn, the second trick operator, to fill the position.

The claimant's vacation had ended on Saturday, November 20. On Sunday, November 21, while it was his assigned rest day, the claimant was under obligation, if required to protect his assigned position which was operated seven days a week, to be available. The claimant's vacation having terminated the day previous, on Sunday the situation was restored to normal. Under the terms of the Agreement, the assigned relief should have worked the position, but as he was not available, then a qualified extra employee should have been used, but if such were not available, as was the case here, the occupant of the position should have been called. The contention of the

Carrier that the phrase "can be required to work" in Section 1 (i) of the Rest Day Rule authorizes it to use any qualified employe, was dealt with in Award 4815. Such phrase was there construed not to give the Carrier an option, when relief and extra men were not available, but required it to use the occupant of the assigned seven-day position.

The claim is for one day's pay at time and one-half. The claimant did not in fact work the position on his rest day, although under the circumstances entitled to it, and, therefore, on the basis of a long line of precedents established by this Board, the claim should be allowed only at the pro rata rate.

**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

The Carrier violated the Agreement.

#### AWARD

Claims (1) and (2) sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1951.