

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines; that,

(1) the Carrier violated the rules of the current agreement between the parties when on February 3, 1948, it blanked the regular assigned relief position No. 3 in the San Francisco, California, general telegraph office; and

(2) J. W. Parness, who was available shall be paid eight hours at the overtime rate because he was denied permission to fill the said relief position No. 3 in the San Francisco, California, general telegraph office, February 3, 1948, on overtime basis.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employees represented by the petitioner, bearing an effective date of December 1, 1944, which agreement (hereinafter referred to as the agreement) was in effect on the date involved in the instant claim. A copy of the agreement is on file with this Board and is hereby made a part of this dispute.

2. The carrier maintains a General Telegraph Office in San Francisco, California, this office being operated on a 24-hour basis with a personnel consisting of a Manager, Wire Chiefs, Printer Machine Operators and relief employees for the purpose of permitting employees occupying positions worked seven (7) days per week to have one relief day in each week.

3. The position involved in this claim was one which was worked 12:01 A. M. to 8:00 A. M. seven days per week, one which was necessary to the continuous operation of the carrier, it being worked Wednesday through Monday by the regularly assigned employee and worked each Tuesday by the employee assigned to relief position No. 3.

4. On Tuesday, February 3, 1948, the employee assigned to relief position No. 3 did not report that she would not fill her assignment and was absent due to personal reasons. The carrier, instead of filling this position with an available employee on an overtime basis, blanked the position.

5. Claimant J. W. Parness who was fully qualified to work relief position No. 3, finished work at 12:00 Midnight, February 2, 1948, was available for overtime and at 12:20 A. M. asked the Wire Chief who was in charge of the office, if he desired the claimant to work overtime due to the incumbent

In Award 3398, this Division denied the claim of a relay telegrapher on the New York Central temporarily assigned to telegraph Job No. 48 for four hours overtime when not used to work four hours on temporary vacancies on Jobs Nos. 51 and 54 in the same relay office various dates during July, 1945, on which dates the carrier blanked the latter positions. The claim covered by Award 3398 was predicated upon Article 13 (c) of the controlling Agreement in effect on that property, reading:

"(c) Regular assigned employees will be allowed to fill temporary vacancies of less than seven (7) calendar days in their own offices. Temporary vacancies of seven (7) calendar days or more and less than thirty (30) calendar days will be filled by the senior qualified employees applying for same within seven (7) calendar days."

By denying the claim in that docket, your Division held to the principle that it is not mandatory that temporary vacancies created by voluntary absence of regularly assigned employees be filled on each and every day the regularly assigned employees do not work. The principle involved in the instant claim is analogous to that principle. Other awards of this Division that hold to the same principle are Awards Nos. 934, 1216, 1293, 1412, 1633, 1853, 2822 and numerous others.

In his letter of March 12, 1948, Sheet 4 of Joint Exhibit "A", petitioner's general chairman states:

"Rule 15 provides employees shall not be required to suspend work during regular hours to absorb overtime. Your attention is called to the fact that this rule applies to all the employees in the office. This rule in connection with Rule 5 clearly indicates positions covered by our agreement must be worked on all days on which the position is assigned to perform service. The suspension of position No. 3 is clearly indicated and the purpose of this suspension or blanking was to avoid overtime."

It has always been understood that the determination of any question as to whether or not it is necessary to work regularly assigned employees overtime is the prerogative of management. A regularly assigned employee may temporarily vacate his own position and under certain conditions acquire another position temporarily vacant, but nothing in the rules cited implies directly or indirectly that a regularly assigned employee may remain on his regular assignment and at the same time demand and obtain the right to work a temporary vacancy during overtime hours at punitive rates of pay. To accord a regularly assigned employee such right would be to recognize his rights to two regular positions concurrently, that is, his own regularly assigned position and another regular position temporarily vacant.

In conclusion, carrier asserts that it has proven conclusively that there is no basis for the instant claim, that it is not supported by the agreement provisions and awards of this Division cited by the petitioner, and that the claim should be denied in its entirety. The Division is respectfully requested to so find and render an award denying the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The regularly assigned relief operator for position No. 3, hours 12:01 A. M. to 8:00 A. M., failed to report for duty, and the occupant of position No. 2, hours 4:00 P. M. to 12:00 midnight, has claimed eight hours at overtime rates because position No. 3 was not filled and he was not required to work the trick. The Petitioners have cited no provisions of the Agreement which require the Carrier to fill the assigned relief day. We are not here concerned with the proposition of blanking the relief day when the occupant of the relief position was ready, able and willing to perform the duties. While the occupant of position No. 2 might be required to work overtime under Rule 20 (f)-3, the Carrier is free to

determine the necessity for such overtime. This is particularly true here in light of Rule 7 which provides that positions need not be filled on assigned relief days.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 facts of record do not show a violation of the current Agreement.

AWARD

Claims (1) and (2) denied.

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.