

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

BOSTON & MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Boston & Maine Railroad that:

(a) the Carrier violated the provisions of the Telegraphers' Agreement when and because it did not fill the vacant Greenfield General Agent's position June 2 through June 5, 1952, by an employee covered by the said Telegraphers' Agreement; and

(b) in consequence thereof the Carrier shall pay Jean Dejnak, a spare employe, the difference between what was earned and what would have been earned as agent, June 2 through June 5, 1952.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of August 1, 1950, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement at Page 35 lists at Greenfield, Massachusetts, the following positions and rates of pay:

General Agent (Minor)	\$353.81 per month
Ticket Agent	1.75 per hour
Asst. Ticket Agent	1.58 per hour

These rates have been subsequently increased in accordance with national patterns. The position of General Agent was first included in the Telegraphers' Agreement August 1, 1950; the monthly rate comprehends 208 hours of service per month.

Mr. Gustavson, occupant of the General Agent position, was off duty on vacation June 2 through June 5, 1952, and according to the Carrier's letters his position was blanked for that period of time, but the Organization was informed from a reliable source that the station cashier performed the agency duties in addition to his regular duties. The clerical force at the station consists of one cashier, one claim clerk and one billing clerk.

Carrier's highest officer to whom appeals are directed denied the claim on the basis the Telegraphers' Agreement does not require the filling of the position "if the man is off sick for a short time."

"No employe will be compelled to accept the work of filling these temporary absences. Before assigning anyone to perform such work, the Railroad will consult with the General Chairman. This procedure establishes no precedent and no claims will be made regarding suspension of work, etc., in this case.

"If the above meets with your approval, will you kindly return one copy with your approval."

(Sgd.) WILLIAM B. MERRY
Supervisor of Schedules

(Sgd.) L. W. ROCKWOOD
General Chairman

August 14, 1950."

(Emphasis Carrier's)

It is to be noted that Carrier agreed to use an employe coming within the scope of the Agreement "when necessary" to fill a General Agent (Minor) position. Carrier asserts that in the circumstances involved in this docket, it was **not necessary** to fill the General Agent's (Minor) position at Greenfield during his vacation period, June 2-5, 1952.

All data contained herein has been brought to the attention of Petitioner.

OPINION OF BOARD: This claim by an available spare employe presents the question whether the Carrier was obligated to fill a temporary vacancy in a General Agent (Minor) position during a vacation.

First. The General Agent (Minor) positions were not covered by the Agreement until August 1, 1950; and thereafter on August 14, 1950 the parties entered into a Special Letter Agreement which reads:

"Question has arisen regarding the filling of positions, referred to as General Agents (minor) in your agreement, for short periods of time due to the temporary absence of the regular incumbents on vacation or due to illness or other reasons.

"The Railroad proposes to fill such positions, when necessary, by the selection of a properly qualified employe who comes within the scope of your agreement. While filling a General Agent's position, as above outlined, the selected employes will be compensated in the same manner as the regular incumbent.

"No employe will be compelled to accept the work of filling these temporary absences. Before assigning anyone to perform such work, the Railroad will consult with the General Chairman. This procedure establishes no precedent and no claims will be made regarding suspension of work, etc., in this case.

"If the above meets with your approval, will you kindly return one copy with your approval."

Insofar as it conflicts with the terms of the Agreement, the later Special Letter Agreement controls (see Award 6356).

Second. The Special Agreement covers the exact situation upon which the claim is based: a temporary vacancy in the General Agent (Minor) position due to vacation.

And the Special Letter Agreement clearly contemplates that, notwithstanding the Rules, the positions will not be filled every time a temporary vacancy occurs. Thus, it is provided that the positions will be filled "when necessary;" that no employe will be compelled to fill the vacancy; that no claims will be made regarding "suspension of work, etc.;" and that such a deviation from the Rules establishes no precedent.

This is plain language; and we find no uncertainty or ambiguity in it. Such being the case, we cannot vary or modify the terms of the Special Letter Agreement by resort to past practices or to the motives that actuated the Organization and the Carrier in entering into it (Award 4386).

Third. By providing that such vacancies will be filled "when necessary," the Special Letter Agreement confers a discretion upon the Carrier to determine whether any such necessity exists at the given time and the given station or office. This discretion is not absolute; but we should not disturb its exercise by the Carrier except upon a showing of abuse.

The essential question therefore is whether the failure to fill the vacancy was arbitrary, capricious or unreasonable.

The Agency force at Greenfield consisted of six positions: General Agent (Minor), Ticket Agent, Assistant Ticket Agent, Cashier, Claim Clerk and Billing Clerk. The duties of the General Agent (Minor) consisted generally of supervision of the other employees, solicitation of business and the investigation of loss and damage claims. We cannot say on this record that any of these functions necessarily required daily attention or that it was impossible to have suspended them altogether during the particular vacation period in question. The assertion is made by the Organization, and denied by the Carrier, that the Cashier actually filled the General Agent (Minor) position during the vacancy; but the record furnishes no means whereby to resolve this conflict.

The conclusion is that no abuse of discretion by the Carrier is established by the record.

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 Special Letter Agreement of August 14, 1950 governs and it was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1954.