

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (West of Buffalo), that:

(1) The Carrier violated the agreement between the parties when it failed to permit L. A. Ross and W. C. Meyers, the regular occupants of the Second and Third Shift positions respectively at "BO" Sandusky, Ohio, to work their rest days November 6 and 7, 1951, after having notified them to work and required or permitted D. O. Neal, an extra man who had completed five work days and 40 hours of his work week on the Second Shift Operator at Elyria Coal Dock, to perform the rest day relief service at "BO" Sandusky.

(2) The Carrier shall be required to pay L. A. Ross for Tuesday, November 6, 1951 and W. C. Meyers for Wednesday, November 7, 1951, on the basis of eight (8) hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: At "BO" Sandusky, Ohio the Carrier maintains the following positions under the Agreement:

| Occupant | Shift | Hours | Classification | Rest Days |
|--------------|--------|-----------------------|-------------------|--------------|
| A. G. Kroft | First | 6:30 A.M.- 2:30 P.M. | Operator-Leverman | Sat. & Sun. |
| L. A. Ross | Second | 3:30 P.M.-11:30 P.M. | Operator-Leverman | Mon. & Tues. |
| W. C. Meyers | Third | 11:30 P.M.- 7:30 A.M. | Operator-Leverman | Tues. & Wed. |

The following Rest Day Relief assignments are involved:

Rest Day Relief 3, Group 2

| Location | Shift | Days | |
|---------------|--------|---------------------|---------------------|
| Huron | First | Sunday | |
| "BO" Sandusky | Second | Monday | (Relief for Ross) |
| "BO" Sandusky | Third | Tuesday | (Relief for Meyers) |
| Bay Junction | Third | Wednesday | |
| Bay Junction | Third | Thursday | |
| Rest Days | | Friday and Saturday | |

assigned to, first, the regularly assigned relief man, if any; second, the extra man, if any, and available, and, third, this regular occupant of the position." Awards 4775, 4815, 4817, 4883, 5177.

"There exists no justification for departing from cited precedents."

The principle recognized by these cited awards, when evaluated with circumstances of claims similar to those in the instant docket, clearly shows that such claims are without substance. In the instant case an extra employe (Neal) performed the work on the rest days for which claims are made.

SUMMARY: It is submitted that this Ex Parte submission shows the claims of Regular Operators L. A. Ross and W. C. Meyers for payment for extra work not performed by them on rest days to be unsupportable because the extra work ("tag-end" rest day relief) was performed by Extra Operator Neal in accordance with—and as required by—applicable rules and understandings.

Summarized briefly, the facts are that:

1. No Agreement rule was violated;
2. Provisions of Article 10, Section 1 (m) and Article 11, cited by the Organization, do not support the claims;
3. Claimant regular operators (Ross, 2nd trick "BO" and Meyers, 3rd trick "BO") were not "displaced from a position" as contemplated by Article 11; their regular assignments were not disturbed or affected;
4. Claimant regular operators had no rights to perform extra work on the rest days for which claims are made;
5. Rules of the Agreement and understandings in connection therewith refute the claims and support in every detail the position of the carrier;
6. The temporary vacancy worked by Extra Operator Neal at Elyria did not exist after Monday, November 5, 1951;
7. Extra Operator Neal worked November 6, 1951 (2nd trick "BO" "tag-end" rest day) and November 7, 1951 (3rd trick "BO" "tag-end" rest day) at straight time rate in accordance with applicable rules of the agreement;
8. National Railroad Adjustment Board Awards support the position of the carrier;
9. The claims are built up on untenable premises at variance with proper application of existing rules and understandings and should be denied.

All evidence and data set forth in this submission have been considered by the parties in conference.

OPINION OF BOARD: This claim is based upon Article 10, Section 1 (m) which reads as follows:

"Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

In our Award No. 6970 we found that extra employe D. O. Neal had worked five days in his work week and was available only at the rest day premium rate of pay on the days involved in this claim. Hence the agreement required use of the regular employes for performance of the work.

In accordance with our consistent prior awards pro rata is the appropriate penalty for such a violation of the agreement, so the claim will be sustained at that 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

That the agreement was violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1955.