

Award No. 7174
Docket No. CL-7207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, as amended, particularly Rules 4-A-1(i) and 5-E-1(i), as well as the applicable Extra List Agreement, effective October 15, 1947, by denying Elsie Reese, Extra Telephone Switchboard Operator, the right to work on February 7, 14, 21, 28, 1952.

(b) Elsie Reese, Claimant, be compensated for a day's pay, on account of this violation, for each such date and all subsequent dates this violation occurs. (Docket W-839.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, as amended, covering Clerical, Other Office, Station, and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

Mrs. Elsie Reese, the claimant in this case, is the incumbent of position of Extra Telephone Switchboard Operator, Cincinnati, Ohio, such position established under the provisions of an Extra List Agreement, effective October 15, 1947. This Agreement was made in accordance with Rule 5-C-1 of the applicable Rules Agreement. We quote this Rule:

"Where extra employees are used extra boards will be established by agreement between the Management and the Division Chairman. The number of extra employees to be used and the

CONCLUSION

The Carrier has shown that under the Agreement the Claimant was not entitled to be assigned to the work in question; that she is not entitled to the additional compensation which she claims; and that the claim should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

Oral hearing is desired.

All data contained herein have been presented to the employe involved or to her duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is an extra telephone switchboard operator at Court Street, Cincinnati, Ohio. There was 24-hour service at this point and necessity for filling six rest days in order to accomplish this result. Five of such days were filled by a regular five day relief assignment. Thursday of the third trick remained as a tag-end relief day which was normally filled by an extra employe. Claimant being the only extra telephone operator at this point usually performed this Thursday tag-end relief.

Commencing February 2, 1952, the employe filling the regular five day relief assignment was absent for four weeks. Claimant was used to work the regular five day relief assignment during this period. The tag-end day (Thursday) was one of the claimant's rest days during the time she worked this relief position. There being no extra employe available to perform the tag-end Thursday work who would otherwise not have 40 hours of work that week, Carrier used the regular third trick operator, it being a rest day of his position, and paid him the rest day rate.

This is in accord with the 40-Hour Week Agreement and our awards on the subject. Awards 6970, 6971, 6973, 7032. The foregoing awards, particularly Awards 6970 and 6973, spell out the manner in which the 40 Hour Week Agreement is to be applied in a case such as we have here. We shall not repeat their content here. They conclusively establish the correctness of Carrier's application of Rules 5-E-1 (i) and 4-A-1 (i), current agreement in the confronting dispute.

The Organization contends, also that claimant was entitled to the Thursday tag-end work under the Extra List Agreement, effective May 1, 1942. We shall assume for the purposes of this discussion that this agreement was not abrogated by the Forty Hour Week Agreement, effective September 1, 1949.

We point out that claimant was assigned to fill the position of a regularly assigned relief employe during the period of this claim. When claimant assumed that position, she assumed the work and rest days of that position. The tag-end Thursday was one of her rest days. In any event, while she worked the regular relief position, she was not an available extra list employe. She could not avail herself of any provisions of that agreement until her regular relief assignment was terminated and she was returned to and marked at the foot of the extra list in accordance with its terms. The Extra List Agreement cannot afford any support for her claim under the factual situation developed in the present case.

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 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

That the Agreement 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 17th day of November, 1955.