

Award No. 8041
Docket No. TE-7576

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad, for money alleged to be due G. M. Voigt, Block Operator, for June 6, 20, 21, 27 and 28, 1952, which was denied by Mr. C. R. Boyd, Train Master.

EMPLOYES' STATEMENT OF FACTS: Claimant Gertrude M. Voigt, Block Operator, held a regular assignment as Block Operator, third shift, "Alan" Tower, with regularly assigned hours 10:00 P.M. to 6:00 A.M. with rest days Friday and Saturday. The rest days of this position are filled by a regular relief employee.

June 6, 1952 (Friday) the regular relief operator was not available to relieve Gertrude M. Voigt, neither was there a qualified extra block operator available to fill the position. Instead of using Gertrude M. Voigt on her rest days as contemplated by Regulation 4-J-1, the Carrier dispatched R. R. Stewart, the regularly assigned third shift block operator at "COOPER" Tower to "ALAN" Tower on Friday, June 6, 1952, to work this rest day relief. Stewart was, in turn, relieved by an extra employee at "COOPER" Tower. Claims for rest days of June 20, 21, 27 and 28 are similar to the one for June 6, 1952, the same procedure having been followed. By thus diverting a regular employee from another point Carrier avoided payment of time and one-half to Gertrude M. Voigt, who was entitled to work her rest days in the absence of the regular relief man or a qualified extra man with less than 40 hours of work in his work week. Claim was properly presented and appealed up to the highest officer of the Carrier designated to handle such matters. He has denied the claim and declines to join us in presenting the dispute to this Board.

POSITION OF EMPLOYEES: The governing agreement between the parties as to regulations became effective September 1, 1949, and as to rates of pay, February 1, 1951. The Agreement applies to two groups of employees. Group 1 governs Agents and Assistant Agents, while Group 2 governs Telegraph Department employees. Group 2 employees are concerned in the present case and the following regulations are invoked in support of claim as filed.

SCOPE RULE

As set forth at Page 1 of the Agreement

ant would only be entitled to the compensation claimed at the straight time rate of pay.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, which constitutes the applicable Agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which she claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

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

(Exhibits not reproduced.)

OPINION OF BOARD: During the period involved herein Claimant G. M. Voigt held a regular assignment as Block Operator on the third trick at Carrier's "Alan" Tower, with rest days Friday and Saturday. On June 6, 20, 21, 27 and 28, 1952, rest days of Claimant, the regular relief employee for Claimant's position was filling another position; nor was there a qualified extra man available to fill Claimant's position. On these days the Carrier used a regularly assigned employee from another point to fill Claimant's position. The Employees contend that Claimant Voigt should have been used, at overtime rates.

The Employees point to Award 6524, which involved facts and rules similar to those involved herein. That Award held that under such rules regular rest days are to be worked in the following priority: "First: By the regularly assigned rest day relief employees, if any. Second: By a qualified extra employee, if any. Third: By the regular occupant." The Employees also point to Award 5475, which contains a statement similar to the one just quoted.

The Carrier places strong reliance upon the fact that J. C. Moore, the regular relief employee for Claimant's position, had acted under Regulation 5-C-1 (a) in filling a temporary vacancy in another position, and the Carrier states that paragraph (b) of Regulation 5-C-1 preserves the Carrier from additional expense as a result of the operation of paragraph (a) of said Regulation. As to this it suffices to note that had the Carrier used an extra man to take J. C. Moore's place at "Alan" Tower, as contemplated by paragraph (a) of Regulation 5-C-1, there would have been no additional expense;

since the Carrier had no available extra man qualified for this service at "Alan" Tower it need not have granted Moore permission to fill the vacancy at "Center" Tower under Regulation 5-C-1 (a), for under said Regulation Moore could do so only "if permission is granted by a proper officer of the Company."

In view of the above consideration it is concluded that the Carrier violated the Agreement. The Claim should be sustained at the pro rata rate (see Awards 4244, 5236, 6394, 6750).

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 Carrier violated the Agreement.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.

DISSENT TO AWARD 8041, DOCKET TE-7576

J. C. Moore, the occupant of a regular relief position, had applied for and was given permission under Rule 5-C-1 to fill another position. Since there were no other employees in the office who could be advanced under Rule 5-C-1 to fill the position temporarily vacated by Moore, and no qualified extra employees were available, this position was temporarily filled by an employee regularly assigned at another location. The latter employee's position was filled by an extra employee qualified for the position but not qualified to fill Moore's regular position. All the employees are in the same seniority district and carried on the same roster.

In this claim the majority concluded that the Carrier violated the agreement. Apparently the violation found by the majority is a violation of Rule 5-C-1 since this is the only rule referred to. The finding of a violation of this rule is apparently based on the statement that "it suffices to note that had the Carrier used an extra man to take J. C. Moore's place at 'Alan' Tower, as contemplated by paragraph (a) of Regulation 5-C-1, there would have been no additional expense." Even so, such a statement ignores the fact that there was no additional expense involved in the course the Carrier followed, and no rule violation as to the Claimant, without an improper assumption that the Claimant somehow was aggrieved by the Carrier's inability to use an extra man to fill the regular relief position temporarily vacated by J. C. Moore when he was upgraded.

While Regulation 5-C-1 is controlling in this claim, the majority have sustained it under the unassigned day rule—Regulation 5-G-1, and rely upon prior Awards 5475 and 6524. The filling of a temporary vacancy on a regularly assigned day of a regular assignment, which is the case here, is not

subject to application of the unassigned day rule as was held in 5475, upon which Award 6524 relies, as that Award has since been overruled by its maker (Judge Carter) in Awards 7130, 7176, 7298, which were followed in Award 7328 (Coffey) and in Decisions 42, 46 and 47 of Special Board of Adjustment No. 117 (Smith).

/s/ C. P. Dugan
/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp