

Award No. 10295

Docket No. TE-9460

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

George D. Bonebrake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY SYSTEM

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

1. Carrier violated the agreement between the parties when it relieved S. R. Camp and J. D. Turner, regularly assigned to the first and second tricks respectively at Andrews Yard, S. C., on their assigned rest days with a regularly assigned agent from another station;

2. Carrier be required to compensate S. R. Camp and J. D. Turner at the time and one-half rate for eight hours on each day they were so relieved — Camp on December 11, 12, 1955, April 29, 1956 and Turner on May 2, June 5, 6, 12, 13, 1956.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Andrews Yard, S. C., is a station on the Columbia Division of the Carrier with continuous service around the clock, covered by three telegraphers' positions. The first trick has assigned hours 8:00 A. M., to 4:00 P. M., second trick 4:00 P. M., to 12 o'clock midnight, and the third trick 12 o'clock midnight to 8:00 A. M. All three are seven day positions; the rest days of the first trick are Sundays and Mondays, the second trick Tuesdays and Wednesdays and the third trick Thursdays and Fridays. There is also a regular relief position at this station established to provide rest day relief, Sundays and Mondays on first trick, Tuesdays and Wednesdays on second trick and Thursday on third trick. The Friday rest day on third trick was otherwise filled.

At the time cause for claim arose, S. R. Clamp was regularly assigned to the first trick and J. D. Turner to the second trick; we are not here concerned with the third trick position.

On Sunday December 11, and Monday December 12, 1955, Mr. C. Bowman, regularly assigned to the relief position, was also an extra Train Dispatcher, and on these two dates was required to work a vacancy on a train dispatcher's

at Andrews Yard. In this situation, Mr. G. T. Grant, regularly assigned as agent-telegrapher at Pelion, S. C., was utilized to fill the temporary vacancy in the assignment of clerk-telegrapher at Andrews Yard under Rules 14 and 15 of the Telegraphers' Agreement, and Extra Telegrapher Rollins was utilized in filling of the temporary vacancy in the position of agent-telegrapher at Pelion, S. C., under Rule 21 (b) of the Telegraphers' Agreement.

Claim which the ORT is here attempting to assert on behalf of Claimant Turner alleges that he should have been utilized at the time and one-half rate in filling the temporary vacancy in the assignment of Clerk-telegrapher Shealy at Andrews Yard on Tuesdays, June 5 and 12, and Wednesdays, June 6 and 13, 1956. It does not question Carrier's action in utilizing Agent-telegrapher Grant in filling the temporary vacancy on the other days. It concedes that was entirely proper under the effective Agreement. This is further evidence of the absurdity of the claim and the inconsistency of the ORT'S position. Certainly it being proper under the terms of the effective Agreement to utilize Mr. Grant in filling the temporary vacancy on the other days, it was entirely proper that he be utilized in filling it on June 5, 6, 12 and 13.

Aside from the fact that Rules 14 and 15 of the Telegraphers' Agreement recognize Carrier's right to temporarily transfer employees, Rule 21 (b) recognizes the right of senior available qualified extra employees to fill temporary vacancies of less than thirty days. By utilizing Agent-telegrapher Grant in filling temporary vacancies in the assignment of clerk-telegrapher at Andrews Yard afforded senior available qualified extra employees the privilege of filling temporary vacancies in the position of agent-telegrapher at Pelion, S. C. This was in strict conformity with Agreement rules. Claims which the ORT is attempting to assert would have the effect of denying senior available qualified extra employees the right to fill temporary vacancies and confer upon regularly assigned employees the right to do so at the time and one-half rate. Thus, in addition to denying work to extra employees, it would penalize the Carrier in doing so. Carrier has not agreed to any such rule.

Under the circumstances, it is obvious that the effective Telegraphers' Agreement has been complied with to the letter, and that there is no basis whatsoever for the absurd claims the ORT is here attempting to assert. In these circumstances, the Board cannot do other than make a denial award.

All evidence here submitted is known to employee representatives.

Carrier not having seen the ORT's submission reserves the right after having done so to make appropriate response thereto.

OPINION OF BOARD: The issue is whether the Claimants had the prior right to work on the dates in question on their assigned rest days when the regular assigned rest day relief employee was absent—having been assigned temporarily to another job or jobs—and there was no qualified extra employee available. Claimants contend that under prior decisions of the Board involving situations similar to the instant one, that the Board has held uniformly and consistently the work on rest days of a regular position should be assigned as follows:

- "First: To regular assigned relief employee, if any;
- Second: To an extra employee, and if none available;
- Third: To regular occupant of the position on an overtime basis."

After citing awards in support of the propositions urged, the Organization contends that the rules involved herein are identical to those in the awards cited.

The Carrier contends, on the other hand, that temporary vacancies — due to vacation period for three employes — in the relief position occurred due to the regular relief occupants working as train dispatchers because of such vacation periods, (one of which was for 5 days and two of which were for 15 days each); that on such occasions the available extra telegrapher was not qualified to fill the relief clerk-telegrapher positions at Andrews Yard; that the Chief Dispatcher in charge of dispatchers and telegraphers of the Columbia Division used G. T. Grant, regularly assigned agent-telegrapher at Pelion, S. C., to fill the temporary vacancy in the relief assignment at Andrews Yard; that the available extra telegrapher protected the resulting vacancy in the position of agent-telegrapher at Pelion.

The right of the Carrier to assign a relief man so as to provide the rest days to employes working the trick is not questioned. Such being the case, the right to transfer or shift employes assigned to the relief job, unless otherwise limited, must follow. The question, of course, is whether such right is limited.

There is no doubt but what prior awards have supported claims of "regular" employes to work relief assignments when, under the circumstances therein existing, vacancies occurred. It would serve no good purpose, as we see it, to analyze each case. They and each of them, were decided upon the facts therein involved. Each, as this one, must, however, rest upon its own set of facts. Here, after analyzing the facts, we fail to find that the Carrier violated the Agreement in not assigning the rest days in dispute to Claimants, but rather to another employe. Whether or not the result was a desirable one is not for us to decide. We are concerned only with its permissibility. We find that is was. This decision, of course, is limited to the facts of this 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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1962.