

Award No. 10396

Docket No. TE-8814

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
TENNESSEE CENTRAL RAILWAY COMPANY**

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

1. Carrier violated agreement when on June 13 to June 24 (inclusive), 1955 it used an employe of another craft to relieve W. W. Judd, Agent, Double Springs, Tennessee, for vacation.

2. Carrier shall compensate W. W. Judd, an hourly rated employe, for the period (Monday through Friday) June 13 to June 24 (inclusive), 1955, at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier, or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective May 1, 1924, and has been amended in many respects. The original agreement, as amended, is on file with this division and is by reference included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Board, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

This dispute involves the question as to whether the Carrier violated the agreement between the parties when commencing on June 13, 1955, and continuing through June 24, 1955, it used an employe of another craft to relieve the Claimant (Mrs. W. W. Judd) for her vacation. The employe used was a Mr. E. M. DeMoss. Mr. DeMoss is a regular employe of the Company, holding seniority as a Clerk and occupying a position covered by the Agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks. It was the contention of the Carrier in handling this dispute on the property that it had the right to use whomsoever it pleased to provide vacation relief. It was the contention of the Employees that the vacation relief should have, under the circumstances involved in this case, been provided by an employe

"Answer: No."

Carrier was obligated to grant claimant a vacation with pay when it was found that she could be released therefor, under which circumstances she has no contractual rights to the work of the position during the period of the vacation. Claimant had contractual rights to return to her assignment at the end of the vacation period, but not during said period, and to the regular pay of her position during the vacation period, all of which was satisfied. She has not been deprived of any compensation nor has she suffered any loss, and the claim filed in her behalf is utterly devoid of support and wholly without merit. Carrier, therefore, respectfully requests that it be denied in its entirety.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced).

OPINION OF BOARD: This is a companion case to TE-8813. Claimant W. W. Judd, Agent at Double Springs, Tennessee, was relieved by E. M. DeMoss during her vacation period June 13 to June 24, 1955 inclusive. For the reasons set forth in our Award Number 10395 we hold that (1) this vacation assignment was improper, and (2) that Mrs. Judd should be granted pro rata pay for the period involved.

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 Employee involved in this dispute are respectively Carrier and Employee 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 has been violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1962.