

Award No. 10861
Docket No. TE-9520

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. On October 19, 1955, Carrier improperly and in violation of Agreement diverted H. C. Pfeiffer from his regular assigned relief position (9:45 P. M. to 5:45 A. M., Towerman-Telephoner, Bethlehem, Pennsylvania) to second trick Telegrapher position (2:00 P. M. to 10:00 P. M.) Packerton, Pennsylvania, and failed to compensate him in accordance with Agreement rules.

2. Carrier will be required to compensate H. C. Pfeiffer at time and one-half his Bethlemlen rate (Towerman-Telephoner, 9:45 P. M. to 5:45 A. M.) for services performed outside his regular assigned hours, i. e., 2:00 P. M. to 9:45 P. M., and for 8 hours at pro rata rate to cover assigned hours 9:45 P. M. to 5:45 A. M., less any amount already paid to him for services performed on October 19, 1955, and in addition thereto \$1.00 expense allowance as provided in Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the parties to this dispute. The agreement, as amended, is on file with the Division and is by reference made a part of this submission as though set out herein word for word.

The Railroad will hereinafter be referred to as Carrier or Management, and the Telegraphers will be referred to as Employees or Telegraphers.

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. The dispute concerns interpretation of the collective bargaining agreement and is, under the provisions of the Railway Labor Act, as amended, properly referred to this Board for award.

ber 19, 1955, and there has been no loss of compensation shown for him as between the compensation he would have earned on his regular assignment and the compensation he was paid for the relief service he performed that date.

5. Rule 6 is the only rule of the schedule agreement between the parties pertinent to this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: Mr. H. C. Pfeiffer is the regular occupant of a cycle relief position whose assignment is as follows:

| | | | |
|------------|----------------------|--------------------------|-----------------|
| "Wednesday | Bethlehem, Pa. | Towerman-Telephoner | 9:45 PM-5:45 AM |
| Thursday | Lehigh, Pa. | Asst. Tkt-Agt-Telephoner | 3rd Trick |
| Friday | Lehigh, Pa. | Towerman-Telephoner | 3rd Trick |
| Saturday | Penn Haven Jct., Pa. | Towerman-Telegrapher | 3rd Trick |
| Sunday | Packerton, Pa. | Telegrapher | 3rd Trick |
| Monday | Rest Day | | |
| Tuesday | Rest Day" | | |

On Wednesday, October 19, 1956, Mr. Pfeiffer was directed to perform work as telegrapher (2:00 P. M. to 10:00 P. M.) at Packerton, Pennsylvania in lieu of his regularly assigned relief position at Bethlehem, 9:45 P. M. to 5:45 A. M.

Claim is made under Rule 6 of the Agreement which reads as follows:

"Relief Work by Regular Employees

"Employees holding temporary or permanent assignments shall not be required to work at other than their regular positions, except in cases of emergency. When required to work temporarily at other than their regular positions in such emergency cases, employees shall be paid at pro rata rate at the higher rate of the two positions and, in addition, shall be allowed actual necessary expenses, or \$1.00 per day, whichever is greater, and pro rata rate for time consumed in traveling to and from such emergency assignment, plus any additional earnings accruing on their regular assignments during their absence. Employees so worked under this rule shall lose no time."

There is no dispute between the parties regarding the facts in this instant. The problem with which we are confronted is to determine whether the assignment of Mr. Pfeiffer on October 19, 1955 to perform work as telegrapher at Packerton, Pennsylvania instead of performing his regularly assigned duties at Bethlehem, Pennsylvania was in fact an emergency as provided for in Rule 6 of the Agreement above stated.

On October 3, 1955 a serious wreck occurred on the Carrier's line at New Market, New Jersey as a result of two trains colliding, causing much property damage and personal injury. An investigation to determine the cause and responsibility for the wreck was scheduled and held in October 20, 1955 by the Superintendent in his office at Jersey City, New Jersey. The Superintendent decided it would be required to have the Assistant Chief Dispatcher, who was on duty and working at the time the wreck occurred at

New Market, New Jersey on October 3, 1955, attend the investigation scheduled for October 20, 1955. This Assistant Chief Dispatcher was scheduled to work on the third trick the night of October 19 through to the morning of October 20 and in order for him to be available he was relieved from his assignment that night. The vacancy was filled by using the senior available extra Assistant Chief Dispatcher whose regular assignment was second trick telegrapher, Packerton, Pennsylvania with hours of assignment from 2:00 P. M. to 10:00 P. M. The Claimant was then assigned to fill the position open at Packerton, Pennsylvania from 2:00 P. M. to 10:00 P. M. on October 19, 1955.

The Carrier states in its submission (Record page 33) that Emergency has been defined in the First Division Award 14450 as follows:

"An emergency is 'an unforeseen combination of circumstances which calls for immediate action': also less properly it is said to be and 'exigency.' That word exigency has been held to mean a case demanding action or remedy."

An emergency situation did take place on the date of the collision and not in the opinion of this Board on October 19, 1955 the date prior to the investigation regarding the causes of the accident. It cannot be argued by the Carrier that October 20 was not voluntarily set by the Carrier and that this date was not set several days prior to October 20. We hold with the opinion expressed in Award 2942 which in part is as follows:

"The Carrier's contention that an unavoidable emergency existed because of its inability to provide a relief telegrapher for Thompson at Rapid City is without merit. This is not an unavoidable emergency within the contemplation of the rule. A party cannot ordinarily assert his own negligence or want of foresight as an unavoidable emergency. If he could, it would be the means of affording him relief from his own contract violations."

It follows then that if an emergency situation did not occur that Rule 6 is not applicable.

It appears inconsistent for the Organization, as in this instant, to argue that an emergency did not occur, to, at the same time claim the benefits provided under the emergency rule or Rule 6 (above quoted).

The Organization claims that Rule 11 was violated. Rule 11 is as follows:

"Guarantee — Suspension From Work

"(a) A regularly assigned employe shall receive one day's pay within each twenty-four (24) hour period according to position occupied or to which entitled, if ready for service and not used, or if required on duty less than eight (8) hours on his position, except on his rest day when occupying positions covered by Section 1, of Rule 7, or on his rest day (Sunday) and holidays when occupying positions covered by Section 2, of Rule 7.

"(b) Employes will not be required to suspend work during regular hours or to absorb overtime."

Under Rule 11, Section (b) in this instant the Agreement was violated.

The Organization claims that in this instant, Rule 13, is applicable.

Rule 13 is as follows:

“Calls

“(a) Except as provided in Rule 7, employees notified or called to perform work not continuous with the regular work period shall be allowed a minimum of three (3) hours for two (2) hours’ work or less; and if held on duty in excess of two (2) hours’ time and one-half rate shall be allowed on the minute basis.

(b) Extra employees called for service (unless notified not to report before leaving home) shall, if not used, be allowed three (3) hours’ pay at the straight time rate of the position for which called. If they report and are used, they shall be paid a minimum of eight (8) hours at the straight time rate of the position worked.”

It is the opinion of this Board that Rule 13 is applicable.

We therefore have a violation of Rule 11 (b) with pro rata time and Rule 13 with time and a half for actual time worked.

We hold with the opinion expressed in Award 5473 which in part is as follows “Our late awards hold that to allow both penalties concurrently is to allow double penalty, and that the greater penalty alone should be allowed. Awards 4109, 5423.”

Claim is therefore sustained for 8 hours at the regular rate of the Bethlehem position which Claimant was scheduled to work on date of claim, in addition to amount already paid for services rendered on this date.

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 violated.

AWARD

Claim sustained to the extent specified in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1962.