

Award No. 10957

Docket No. TE-10137

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. Carrier violated rules of the Agreement between the parties hereto in improperly relieving Ronald P. Fitzgerald on rest days as follows: February 5, 12, 19, 26 and March 5, 1957; T. Burns on rest days as follows: February 1, 2, 8, 9, 15, 16, 23, and March 1 and 2, 1957; G. H. Burch on rest days as follows: February 3, 4, 10, 11, 17, 18, 24, 25, and March 3 and 4, 1957.

2. Carrier shall compensate Ronald P. Fitzgerald for eight (8) hours at time and one-half rate for each day as follows: February 5, 12, 19, 26 and March 5, 1957; T. Burns for eight (8) hours at time and one-half rate for each day as follows: February 1, 2, 8, 9, 15, 16, 23, and March 1 and 2, 1957; G. H. Burch for eight (8) hours at time and one-half rate for each day as follows: February 3, 4, 10, 11, 17, 18, 24, 25, and March 3 and 4, 1957.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Grand Trunk Western Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement was effective November 1, 1955, and is on file with this Division. The Agreement by reference is included herein as though copied word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by the Carrier to handle such disputes, and failed of adjustment.

1. At all times herein involved C. R. Korby was the owner of the rest day relief assignment in "QN" office, Detroit, Michigan. The assignment had work and rest days as follows:

Friday	12:01 A. M. to 8:00 A. M. (T. Burns)
Saturday	12:01 A. M. to 8:00 A. M. (T. Burns)

assigned hours of his own position. Only on Saturdays was he working the same hours at QN Detroit that he worked at Milwaukee Junction and received pro rata rate of pay. Carrier attempted to comply with the intent of the 40 hour week agreement by so arranging its available qualified employees that the least desirable solution of working its regular employees on their rest days was not necessary. In this way extra employees were given employment they were qualified to perform.

Carrier reiterates that the Agreement was not violated nor does the Agreement support the claim of the employees and same should be declined in its entirety. It is requested that the Board should so award.

This claim has been progressed by the employees up to the highest officer of this Carrier designated to handle claims and grievances and has been declined.

All data contained herein has in substance been presented to the employees and are part of the matter in dispute.

OPINION OF BOARD: The facts are not in dispute. C. R. Korby held the regular relief assignment at "QN" office, Detroit, Michigan. His hours of work varied on the days when he relieved the three clerks on their rest days. His rest days were Wednesday and Thursday.

Korby was permitted to absent himself from work for 33 days commencing February 1, 1957. Two weeks of that was Korby's vacation and the balance was a granted leave of absence.

On January 7, 1957 the Chief Dispatcher directed J. F. Corzine to work Korby's shift at the "QN" office in Detroit from February 1 to March 5, 1957. Corzine at that time held the regular relief assignment at Milwaukee Junction. His rest days were Thursday and Friday.

Claimants, Ronald P. Fitzgerald, T. Burns and G. H. Burch held regular assignments at the "QN" Detroit telegraph office. Fitzgerald's regular assigned rest days were Tuesday and Wednesday, Burns' were Friday and Saturday and Burch's Sunday and Monday. There was no extra employee available who was qualified to work at the "QN" office. The Claimants contend that they should have been assigned to work Korby's shift on their rest days and, accordingly, filed claims for amounts each would have received had they been so assigned.

Korby was on vacation from February 1 to February 14, 1957 and the balance of the time he was on leave of absence. The National Vacation Agreement permits the Carrier to use regular employees to relieve employees on vacation when no qualified extra employees are available. This is true even though the Carrier shifts regular employees around to take care of the vacation absence. Referee Morse, in answer to a question raised for the interpretation of Article 6 of said National Vacation Agreement, defines "vacation relief workers" as follows:

"... The term also includes those regular employees who may be called upon to move from their job to the vacationer's job for that period of time during which the employee is on vacation."

Award 7330 (Coffey) also considered Article 6 of that Agreement. While we sustained the claim in that case because more than 25% of the blanked position was distributed to other employees, and while that issue is not involved in the case at hand, we are impressed with the general interpretation of Article 6. It is sufficiently pertinent to quote as controlling to the issue here involved. We said in that Award:

"There is much to be said for Carrier's position that the National Vacation Agreement, as interpreted, allows for some rearrangement of forces. Neither can fault be found with the general proposition that the Vacation Agreement is not to serve as a 'make work' device.

The expression, 'vacation relief workers' is defined in general terms by the National Vacation Agreement to mean all persons who fill the positions of vacationing employees. That definition, as interpreted, takes in regular employees who may be called upon to move from their job to the vacationer's job for the period of time during which the employee is on vacation.

A careful reading of the record out of which came the foregoing interpretation conclusively proves that, the needs of the service permitting, and rules not prohibiting, Carrier may utilize the services of regular employees for vacation relief even to the extent of moving a regular employee from his job to the vacationer's job for the period of time during which the employee is on vacation."

While the factual circumstances in Award 7773 (Smith) are not similar to those involved here, we did say:

"We think the Vacation Agreement contemplates that the work of an employee on vacation should be (1) left undone, (2) assigned to other employees covered by the Agreement (3) performed by the relief worker (4) performed by the regular assigned employees under certain circumstances."

It is not the purpose of the Vacation Agreement to impose on the Carrier additional half time penalty pay during an employee's vacation absence. If no extra qualified employee is available and if the principle of seniority is preserved, the Carrier may arrange his work force in such a manner that will enable him to operate efficiently. It goes without saying, that in arranging his work force, the Carrier may not penalize the employees transferred and may not contravene any specific terms of the Agreement. We fail to find anything in the present Agreement which prohibits the Carrier from assigning a regular employee under these circumstances to temporarily replace an employee on vacation. None of the Awards cited by the Organization directly involve reassignments to fill vacation absences.

From February 15 to March 5, 1957, Korby was on a leave of absence. This leave was granted to him voluntarily by the Carrier. The provisions of the Vacation Agreement do not apply.

It is a well settled principle of this Board that rest day assignments are made in the following manner:

1. To a regular assigned relief man.
2. If the regular assigned relief man is not available, to a qualified extra man.
3. If a qualified extra man is not available, to the regular occupant of the position on an overtime basis.

In Award 9393 (Hornbeck) we reaffirmed this principle and said:

"The foregoing order of rest day relief assignments is stated in many Awards of this Board. None is cited to the contrary. The rule has become *stare decisis*."

Also see Awards 5049 (Kelliher), 8147 (Elkouri), 8041 (Elkouri), 6524 (Leiserson), 5900 (Daugherty), 5475 (Carter), 5236 (Boyd), 4815 (Shake), 4192 (Carter) and 3979 (Carter). While in some of these Awards the regular relief man was absent for a few days only and does not involve an extended leave of absence, the principle is the same. The number of days of absence is not the criteria. If the principle is sound, and we think it is, it should be applied whether the voluntary absence is for a day, a week or longer.

The Carrier argues that Rule 6 G (7) "was intended to discourage Carrier from using employes on their days of rest." Rule 6 G (7) says:

"The least desirable solution of the problem would be to work some regular employe on the sixth or seventh days at overtime rates and thus withhold work from additional relief men."

In support of its position, Carrier cites Award 7328 (Coffey). That dispute was between the Clerks' Organization and another Carrier. That Carrier employed "a furloughed employe from the Car Department to fill a temporary vacancy in a regular relief position."

We have frequently held that a Carrier may, when no qualified extra employe is available, employ a furloughed employe from another craft to fill a temporary vacancy of a regular relief employe. In Award 10371 (McDermott) we said:

"We are of the opinion that under the factual situation herein, there is nothing in the rules to prohibit the Carrier from hiring as a clerk a furloughed telegrapher to fill the vacancy on the Utility Clerk's position."

The hiring of the furloughed telegrapher to fill the vacation absence created an extra clerk on the Clerks' Seniority Roster. The same was true when a furloughed employe was hired to fill a temporary vacancy in the dispute decided by Award 7328.

In the case before us no new or furloughed employe was hired. Had the Carrier done so, such new employe would have acquired seniority on the Telegrapher Seniority Roster and would have been a qualified extra employe to fill Korby's relief position. Since this was not done Awards 7328 and 10371 are not applicable.

Furthermore, Rule 6 G (7) is not inconsistent with the one, two, three principle affirmed in Award 9393 and others herein cited. These Awards say that the regular occupant of the position is assigned only if there is no qualified extra man available and also if the regular assigned relief man is not available. The assignment of the regular employee under this principle is certainly the "least desirable solution" as stated in Rule 6 G (7).

There is no merit to Carrier's contention that we are dealing here with a specific vacancy belonging to Korby and, therefore, a position vacancy existed when Korby was on leave and not a rest day assignment. In support of this argument, Carrier cites Award 10299 (Bonebrake). In that dispute there was a vacancy position and "Claimants' requests are clearly for overtime and not for the jobs." We said:

"Here it is clear, as we see it, that Claimants were seeking overtime, and not the vacancies themselves. Overtime necessarily would be referable to their respective regular assignments, and the record is barren of any indication the Claimants desired to give them up and take the ones where the temporary vacancies occurred. It would be unrealistic to infer that desire."

In that dispute the Claimants contended that they should have been used to fill the temporary vacancies "in addition to working their own respective assignments." The temporary vacancy on Yard Clerk Position No. 3 occurred on February 8, 9, 10, 12, 16, 17, 18 and 19, 1957. It was a regular assignment. The scheduled work hours for that position were from 11:59 P. M. to 7:59 A. M. Claimant, M. E. Hanlon occupied Position No. 2, also a regular assignment, which had scheduled hours of work from 7:59 A. M. to 3:59 P. M. The Claimant requested that he be assigned sixteen consecutive hours work for three days a week and eight hours work on each of his rest days. The position of the other Claimant is similar. Obviously, these facts distinguish it from the facts in the dispute at hand. That was not filling a relief assignment as it is here.

Carrier voluntarily granted Korby a leave of absence from February 15 to March 5. They knew then or they should have known that Korby's relief assignment had to be filled. They could have had a qualified extra man available or they could have hired a furloughed employee from another craft or they could have trained an extra employee to become qualified for Korby's relief position.

Corzine had a regular assignment. He had every right to remain at his assignment. He did not have status as a qualified extra, available employee. In the absence of an extra, qualified available employee Claimants should have been assigned the rest days during Korby's absence from February 15 to March 5, 1957.

It is also Carrier's position that it had the right to divert Corzine to Korby's relief position under Rule 24. This Rule merely provides how a regular employee, who is required to perform the work other than his regular position will be paid and how his rest day rights are protected. It does not give the Carrier the unqualified right to make such diversion. Rule 23 specifically provides that a regular assigned Agent may be used as a relief Agent "when the number of regular relief agents . . . is not sufficient to meet the requirements, and no qualified extra employee is available." Rule 24 deals with employees other than Relief Agents and no such right to use regular assigned employees as relief employees is provided in that Rule. Rule 24, therefore, is not applicable here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 did not violate the Agreement by assigning Corzine to Korby's regular relief position during the vacation period from February 1 to February 14, 1957, and Carrier did violate the Agreement from February 15 to March 5, 1957.

AWARD

Claim is sustained only for the period from February 15 to March 5, 1957.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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

DISSENT TO AWARD NUMBER 10957, DOCKET NUMBER TE-10137

The portion of this Award sustaining the claim is in error. That part of the Award holds that the Claimants were entitled on their rest days to fill the vacancy on the relief position.

The Award is erroneous in holding that Claimants were entitled to any work days on the basis of the Awards cited. These days were work days of a regular relief assignment and when the regular relief employee is absent, the vacancy is filled the same as any other temporary vacancy. **Awards 7176, 7298, 7328, 8527, 9643 and 10244.**

Furthermore, Rule 24 and its background demonstrate that it was intended to have the same effect, as captioned, for "Assigned Employees (Other Than Relief Agents)" as Rule 23 has for relief agents. Rule 24 clearly contemplated what was done here to fill the portion of the vacancy in question.

Also since these Claimants performed no service on the dates of claim, compensation should have been limited to pro rata.

/s/ **Thomas F. Strunck**

/s/ **P. C. Carter**

/s/ **R. A. Carroll**

/s/ **W. H. Castle**

/s/ **D. S. Dugan**