

Award No. 11296

Docket No. TE-10264

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

1. Carrier violated the Agreement when on October 5, 6 and 7, 1956, it required Telegrapher F. H. Gibbs, regular assigned occupant of Relief Position No. 8 to relieve Agent J. Wilson, Fort Edward with hours outside his regular assigned position.

2. Carrier shall compensate F. H. Gibbs for a call (two hours at time and one-half rate) as provided in Article 3(d), for each day (October 5, 6 and 7, 1956); also deadheading time between Whitehall and Fort Edward and necessary expenses.

3. Carrier shall compensate Telegraphers N. W. Goss and D. F. Viault, second and third trick telegraphers respectively, Fort Edward, for four hours overtime on each day, October 5, 6 and 7, 1956, since they were available for overtime service.

EMPLOYEES' STATEMENT OF FACTS: There was at the time this dispute arose in full force and effect collective bargaining Agreement entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective July 1, 1944, and is on file with this Division. The Agreement, by reference, is made a part of this submission as though set out herein word for word.

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

1. Relief position No. 8 was established as provided in Article 3½, Section 1(e).

pensation while assigned to relieve another regular employe is fully covered by Article No. 7 and he is not entitled to any additional compensation under the Call Rule or any other rule of the Telegraphers' Agreement. Mr. Gibbs was paid the rate of the position he filled on the dates of claim as that rate was considerably higher than his regular rate. He was allowed automobile mileage of 48 miles at 7¢ per mile each day. It appears that claimant is entitled to traveling time under the second sentence of Article No. 7 for which he has not been paid.

Claim of regular telegraphers N. W. Goss and D. F. Viault for 4 hours on each day of claim at overtime rate for service not performed because they were not used to fill the vacant position of Agent-Telegrapher is not supported by any rule of the Telegraphers' Agreement. In addition, it would have been a violation of the Hours of Service Law to use these claimants in this manner under the circumstances existing in this case. In using Telegrapher Gibbs we have demonstrated that other means could be employed to fill the vacancy without the necessity of requiring claimants Goss and Viault to work in excess of assigned hours which would have resulted in violation of the Hours of Service Law. The employes cite no rule to support this claim while it was being handled on the property.

There was no violation of the Telegraphers' Agreement in the manner in which the vacant position was filled on October 5, 6 and 7, 1956, and claim is not supported by any rules of the Telegraphers' Agreement.

Carrier respectfully requests that claim be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

OPINION OF BOARD: This is a dispute between the Order of Railroad Telegraphers and the Delaware and Hudson Railroad Corporation.

On October 5, 6 and 7, the regular incumbent of telegrapher's position at Ft. Edward was absent. He was taking an aptitude test for the Carrier for the purpose of determining qualifications for an appointment to an official position. There were no extra employes available to fill the vacancy. The Carrier assigned Claimant Gibbs and he was paid the rate of that position. Claimant Gibbs was the occupant of a regular relief assignment. The Petitioner contends that the Carrier violated Article 7 when they required a regularly assigned employe to perform relief work. Petitioner also contends that Claimant is entitled to deadhead pay while traveling to and from the temporary assignment. Petitioner also contends that telegrapher, Goss, and telegrapher, Viault were available for overtime service and should have been called to

We believe Article 7 is controlling in regard to Claimant Gibbs.

"DETAIL SERVICE

"Regularly assigned employes will not be required to perform relief work except in cases of emergency, but when required to perform relief work they will be paid the rates of the positions they fill but not less than their regular rates. If required to deadhead they will be paid on pro-rata basis of the higher-rated position while traveling to and from the temporary assignment. They will be reimbursed for any time lost in making the change and necessary expenses incurred by reason of transfer."

The Carrier alleges that an emergency existed and consequently they were authorized to call Claimant. However, there was no contention of an emergency existing on the property and this issue was not raised until submission before this Board. We therefore find that the Claimant, Gibbs, is entitled for a call for two hours for each day, October 5, 6 and 7, at pro-rata rate, and also for deadheading time between Whitehall and Ft. Edward, provided this item has not already been paid.

Petitioner has failed to establish that Claimants, Goss and Viault were entitled to the work and for that reason their claim falls.

For the foregoing reasons we find that the Agreement was violated as set forth above.

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 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 violated.

AWARD

Part 1 and 2 sustained. Part 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1963.