

Award No. 12034

Docket No. TE-10336

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the Telegraphers' Agreement when it required L. S. Smith, regularly assigned relief clerk-telegrapher-leverman, to suspend work during the regular hours of his assigned position at Fourth Avenue, Louisville, Kentucky, and work the third shift clerk-telegrapher-leverman position on November 18, 19, 20, 21, 25, 26, 27 and 28, 1956.

2. Carrier shall compensate L. S. Smith the difference between the pro-rata rate he was paid and the time and one-half rate of pay to which he was entitled for each day he was required to work the third-shift clerk-telegrapher-leverman position, outside his regular assigned hours at Fourth Avenue, Louisville, Kentucky on November 18, 19, 20, 21, 25, 26, 27 and 28, 1956.

EMPLOYES' STATEMENT OF FACTS: Claimant L. S. Smith was the regular assigned rest day relief clerk-telegrapher-leverman at Fourth Avenue, Louisville, Kentucky. His relief assignment with assigned hours is programmed as follows:

First shift, Sunday and Monday, 7:00 A. M. to 3:00 P. M.

Second shift, Tuesday and Wednesday, 3:00 P. M. to 11:00 P. M.

Third shift, Thursday, 11:00 P. M. to 7:00 A. M.

Assigned rest days Friday and Saturday.

Mr. A. G. Tucker is the regular assigned third shift clerk-telegrapher-leverman at Fourth Avenue, Louisville, Kentucky. His assigned work week begins on Saturday with rest days of Thursday and Friday. His assigned hours are 11:00 P. M. to 7:00 A. M.

Beginning on Sunday, November 18, 1956 and continuing on Monday the 19th, Tuesday the 20th, Wednesday the 21st, Sunday the 25th, Monday the 26th, Tuesday the 27th and Wednesday the 28th, the Carrier removed Claimant L. S. Smith from his position as regular assigned rest day relief clerk-telegra-

CONCLUSION

Carrier has shown that:

(a) Claim is barred as it is not the same claim presented and handled through the usual channels on the property as required by law, the agreement and Board Rules of Procedure.

(b) Part of the claim which the ORT here attempts to assert is barred by the plain language of the Agreement of August 21, 1954. That part of the claim should therefore, be dismissed by the Board for the want of jurisdiction if not dismissed for the reason stated in (a) above.

(c) The effective Telegraphers' Agreement was not violated as alleged by the ORT, and the monetary demand which the ORT has here made is not supported by any provision contained therein.

(d) The Vacation Agreement and the agreement here in evidence contemplate that vacations be granted. Telegrapher-Leverman Tucker was granted a vacation pursuant to agreement rules, but there was no vacation relief employee available to take his place. In this situation, the former accepted practice was followed as was the specific provision of the Vacation Agreement; i.e., the principle of seniority was observed and the remaining force utilized even at the penalty rate to afford Telegrapher-Leverman Tucker a vacation, resulting in the three telegrapher-levermen who remained benefiting materially. In fact, Claimant Smith benefited to the extent of \$51.24 by having worked days he would not have worked had Telegrapher-Leverman Tucker not been granted a vacation.

(e) The complained of action was strictly in accordance with the former accepted practice, all of which is evidenced by affidavits attached hereto and made a part hereof.

(f) Claims identical in principle have heretofore been denied by prior Board awards.

(g) Prosecution of the claim by the ORT is nothing more than an effort to exact money from the Company for no justifiable reason whatsoever. Five rules in evidence recognized the management's right to take employees from one assignment and use them on another without penalty. There is no basis for misconstruing these rules as the ORT here demands. Furthermore, the ORT has submitted the claim to the Board with the thought that if it is successful in distorting the agreement it will have gained materially; otherwise, it will not have lost nothing.

Claim being barred, should be dismissed by the Board for want of jurisdiction and if not dismissed should be denied. The ORT cannot exact money for the Company in the manner which it here attempts to do.

All evidence here submitted has been made known to employee representatives.

Carrier, not having seen the ORT's submission, reserves the right after doing so to reply thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is the same in all material respects as

Docket No. TE-10302, Award No. 11970. We adopt the opinion therein as determinative of the issues in 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 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 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 19th day of December, 1963.