Award No. 12035
Docket No. TE-10337

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 Rules 6 and 9(b) of the Telegraphers' Agreement when, commencing with August 15, 1956 and through August 25, 1956, upon instructions from Chief Dispatcher G. C. Snyder, Asheville, North Carolina, Mr. J. R. Cauble, who holds a regular assigned Rest Day Relief Position at "BI" Tower, Asheville, North Carolina, was required to relieve Mr. R. H. Lofton, the regularly assigned third-shift Telegrapher-Leverman "BI" Tower, Asheville, North Carolina, for his vacation.

2. Carrier shall compensate Mr. J. R. Cauble, Telegrapher-Leverman Rest Day Relief Position "BI" Tower, Asheville, North Carolina, in accordance with Rule 9 for the difference between the pro-rata rate which he was paid and the time and one-half rate to which he was entitled for the work performed on the third-shift Telegrapher-Leverman Position "BI" Tower, Asheville, North Carolina, on August 15, 19, 20 and 21, 1956.

EMPLOYES' STATEMENT OF FACTS: Claimant J. R. Cauble was the regularly assigned rest day relief telegrapher-leverman at "BI" Tower, Asheville, North Carolina. His relief assignment with assigned hours is programmed as follows:

First Shift	Sunday and Monday	7 A. M. to 3 P. M.
Second Shift	Tuesday and Wednesday	3 P. M. to 11 P. M.
Third Shift	Thursday	11 P. M. to 7 A. M.

Assigned rest days - Friday and Saturday

Mr. R. H. Lofton is the regularly assigned third-shift telegrapher-leverman at "BI" Tower, Asheville, North Carolina. Mr. Lofton was off on his as-

tolled as to Francis and he was available to fill that vacancy, and we say properly so.

We also believe the following to be applicable and controlling in principle.

'Treating Article X as a special rule, as we think it should be treated, it seems inconsistent to hold that it is to be regarded as an exception to the general rules in Article III and VII. No inequity results in such an application. The claimant lost no time, and was paid at the higher rate applicable to the two positions on which he worked * * *.' We have heretofore set out Article X, Section 2-a referred to in the above award. See Awards 6768, 2511, 3132.

We conclude, from the record in its entirety and the awards herein cited or referred to, that the Carrier did not violate the Agreement, and the claim should be denied."

When all the provisions of the Telegraphers' Agreement and the Vacation Agreement are considered in the light of the facts and the awards above cited, no conclusion can be reached other than that under the circumstances the claim which the ORT here attempts to assert is without any basis and is, therefore, accordingly denied.

CONCLUSION

Carrier has proven that:

(a) The effective Telegraphers' Agreement was not violated as alleged by the ORT, and the monetary demand which the ORT here requests is not supported by it.

(b) The complained of action was in accordance with agreement rules and the former accepted practice, as evidenced by the first paragraph of Rule 44 of the Agreement, as well as affidavits attached hereto and made a part hereof.

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

Claim being without any basis and unsupported by the Agreement in evidence, the Board cannot do other than make a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

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

(Exhibits not reproduced.)

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