

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

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

1. The Carrier violated the parties' Agreement when on July 9, 1958, it used an employe from another station to fill a one day temporary vacancy on the first shift telegrapher's position at Peru, Indiana.

2. The Carrier shall, because of the violation set out above, compensate A. L. Brehmer, regular assigned occupant of the second shift telegrapher's position at Peru, Indiana, who was available and entitled to perform the work, a day's pay.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

At Page 26 of said Agreement, Rule 27 (Wage Scale) are listed the positions existing at Peru, Indiana, on the effective date of said Agreement. The listing reads:

Location	Title	Rate Per Hour
Peru	1st T	\$2.02½
	2nd T	1.98½
		1.98½

A. L. Brehmer, Claimant is the regularly assigned second shift telegrapher at Peru, Indiana; hours 3:00 P. M. to 11:00 P. M., Thursday through Monday, Tuesday and Wednesday, rest days.

W. I. Stump, was on July 9, 1958, filling a temporary vacancy on the first shift telegrapher's position at Peru, Indiana, with assigned hours 7:00 A. M. to 3:00 P. M., work week, Monday through Friday, rest days, Saturday and Sunday. Mr. Stump is also an extra train dispatcher.

An employe who desires to work on other than his regular assignment should file his current address and telephone number with the carrier's chief dispatcher in order that he might be reached in the event his services are required for such work.

The Chairman of the General Committee in his letter of December 16, 1958, in replying to the Assistant General Manager's letter dated November 24, 1958, stated in reply to the statement that Mr. Brehmer had failed to advise where he could be located when not on duty and that the Peru telephone directory failed to reveal his name, that:

"Mr. Brehmer should have been called at his last known address at Delphi where his telephone was known and was his last known address, he still lived there and had made no change in his address or telephone, in fact he did not move to Peru until August, 1958
* * *"

Mr. Brehmer was regularly assigned as third trick telegrapher-leverman at Delphi, Indiana, located approximately 36 miles west of Peru, on December 3, 1957, and first worked thereon December 4, 1957. Mr. Brehmer had not furnished his address or advised where he could be reached when not on duty while assigned at Delphi and, therefore, no attempt was made to call him at an address at Delphi when he could not be located at an address at Peru, Indiana.

In conclusion, the claimant was not entitled by agreement to claim the temporary vacancy on the first trick; he had not made himself available for the work; and there is no rule in the telegraphers' agreement providing for the compensation claimed on his behalf by reason of not being used.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the regular assigned telegrapher at Peru, Indiana, scheduled to work from 3:00 P.M. to 11:00 P.M. Thursday through Monday with rest days on Tuesday and Wednesday.

On Wednesday, July 9, 1958, the first trick train dispatcher at Peru, called to report that he was sick and that he would not be able to work that day. Carrier assigned W. I. Stump who was filling a temporary telegrapher's position on the first shift at Peru, to fill the vacant train dispatcher's position and assigned D. A. Woodruff, a regular assigned third shift telegrapher at Logansport, Indiana, sixteen miles from Peru, to fill the telegrapher's position vacated by Stump. Woodruff was on his rest day.

Claimant and Woodruff were on the same seniority roster for telegraphers' employer on Carrier's Montpelier Division. Claimant's seniority date on the roster is shown as April 4, 1951 and Woodruff's seniority date is shown as April 5, 1954.

Petitioner contends that Claimant should have been called and assigned to the temporary vacancy and asks that Claimant be compensated for eight hours at the straight time rate.

Carrier replied that Claimant was unavailable because he could not be reached when the vacancy occurred. Carrier made an effort to reach Claimant.

In its Ex Parte Submission, Petitioner states:

"The record shows, that Claimant as a regular assigned telegrapher at Delphi, Indiana furnished the Carrier, on the prescribed form, a record of his home address and telephone number. That this information was in Mr. Peter's office as of the date of this complaint is a matter of record. That the Carrier used this information in an attempt to call the Claimant subsequent to the filing of this claim is also a matter of record."

This statement is not supported by any evidence. As such, it is only a mere assertion which may not be considered.

The record shows that in handling this claim on the property Carrier wrote to Petitioner in each step of presentation and appeal advising Petitioner that Claimant at no time furnished Carrier with his address or where he could be reached when not on duty. Petitioner presented no affirmative evidence that Claimant did furnish Carrier with his address and his telephone number where he could be reached in the event extra work was available. On the contrary, the record shows that Claimant did not file his address and telephone number with Carrier until August 7, 1958, a month after the claim arose.

On the basis of the record we are obliged to conclude that there is no merit to the claim.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1964.