Award No. 14109
Docket No. TE-13985

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad, that:

1. Carrier violated the parties' Agreement by requiring Operator V. Gay, occupant of a relief position regularly assigned at Larchmont and New Rochelle, New York, to suspend work thereon in order to perform non-emergency relief work at Glenbrook, Connecticut, on April 28 and May 1, 1961.

2. Carrier shall now pay a day's pay (8 hours) to each claimant named below, who were, on the claim dates shown beside their names, on their rest days and available for the service:

W. M. Paul .....April 28, 1961
A. V. Genovese.....May 1, 1961

EMPLOYES' STATEMENT OF FACTS: Carrier maintained a position at Glenbrook, Connecticut, classified as agent; said position assigned Monday through Friday. This position became vacant commencing Friday, April 28, 1961. The vacancy came about because the occupant (Mr. Peters), who had acquired the position on Monday of that week (April 24), disqualified himself on Thursday, April 27.

Mr. V. Gay, who is not a claimant, occupied a regular relief position (Relief Position No. 34), which was assigned to work as follows:

Thursday	Agent	Larchmont, N. Y.	7:15 A. M.–4:15 P. M.
Friday	Agent	Larchmont, N. Y.	7:15 A. M.–4:15 P. M.
Saturday	Ticket Agent	New Rochelle, N. Y.	7:00 A. M.–3:00 P. M.
Sunday	Ticket Agent	New Rochelle, N. Y.	7:00 A. M.–3:00 P. M.
Monday	Operator-Clerk	New Rochelle, N. Y.	5:00 P. M.–1:00 A. M.
Tuesday	Rest Day		
Wednesday	Rest Day		

man Marr states that the vacancy at Glenbrook was for only two days. This is inaccurate. It was not until after May 6 that the carrier was able to obtain a replacement — thus, the vacancy ran for seven days. These matters, of course, were brought to the attention of the Organization, who chose simply to ignore them in pursuit of their point that regardless of circumstances, the November 8th Agreement controls and carrier has lost its right to transfer a man under Article 29.

Thus, at each turn, the question of the scope of the November 8th Agreement is at issue, and it would seem appropriate to give some background information on that Agreement.

The November 8, 1960, Agreement was the product of the parties' efforts to dispose of a series of disputes arising out of the use of regular men on their relief days at other than their assigned work locations. The Organization, in the absence of any rule, demanded that if the carrier were to use a regular man on rest, it must use the senior man, regardless of his distance from the vacancy. Carrier insisted that in the absence of a rule, it was free to, and could properly, use a junior man in proximity to the vacancy. However, the lack of uniform practice and the increased number of claims evidenced the need for some agreement on the question — hence, the November 8th Agreement. It was the intent of the parties by this agreement to spell out the relative rights of regularly assigned employes to work on their relief days, and we submit that that purpose was accomplished. That it was not the intent of the parties to write a substitute for Article 29 is clearly evidenced by the fact that the November 8th Agreement is stated expressly as an exception to Article 29. It may well be that the Telegraphers are dissatisfied with the terms and conditions of Article 29, but the avenue for change lies in negotiation, and not in placing an interpretation on the November 8th Agreement which would have the effect of writing Article 29 out of the contract.

In summary, we point up that during the period immediately prior to the claim, carrier, at considerable additional expense, had taken all reasonable preparations for covering the expected vacancy. The fact that Peters, after training for the job, would cover for four days and then disqualify himself was no more foreseeable than would have been his illness, or other incapacity. We submit that Article 29 contemplates that the carrier may transfer an employe in such circumstances and that the November 8th Agreement simply does not apply.

The claimants had no demand right to work on the dates in question, and their claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The following facts are uncontroverted: At Glenbrook, Connecticut, Carrier maintained a combined freight and ticket agency. This station was open from Monday to Friday and closed weekends. A temporary vacancy arose when the regular incumbent of the agency position at Glenbrook, Anderson, bid in another job and a spare (extra) employe, Peters, was called for the purpose of covering the position until that position should be bid in by another senior employe. In order to assure that Operator Peters was sufficiently qualified to cover the assignment at Glenbrook, Agent Anderson was held at Glenbrook to work with Peters until he became accustomed to the station and was then released to transfer to his new assignment. Peters took over Glenbrook on his own Monday, April 24, 1961.

On Thursday, April 27, after working the assignment for four days and having completed his assignment on April 27, the extra man, Peters, contacted the Chief Train Dispatcher and notified him that he could not handle the duties of the assignment, and then disqualified himself. On April 28, Friday, and May 1, Monday, Gay, a regularly assigned incumbent of a Relief Position, was taken off from his assignment, some 16½ to 18 miles distance from Glenbrook and placed on the Glenbrook assignment, where he covered the vacancy.

Claims were later filed for W. M. Paul and A. V. Genovese, for Paul on April 28 and for Genovese on May 1. These employes worked positions located two (2) miles and two and one-half (2½) miles respectively from Glenbrook. On these days they were observing rest days, but were available for work, if needed.

It is the contention of the Petitioners that, inasmuch as the Claimants were the senior qualified employes assigned at the nearest point to the point where the vacancy occurred on their respective rest days, they should have been called to fill the vacancy at Glenbrook on those days pursuant to the Memorandum of Agreement effective November 15, 1960.

The Memorandum of Agreement is, in part, as follows:

> "AGREEMENT BETWEEN THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND THE EMPLOYES OF THE AFORESAID COMPANY REPRESENTED BY THE ORDER OF RAILROAD TELEGRAPHERS.
>
> ———
>
> IT IS AGREED THAT:
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> **Except as provided for in Article 29** of the current Agreement dated September 1, 1949, short vacancies will be filled as follows in the order shown:
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> * * * * *
>
> (d) By the senior qualified available employe assigned at the nearest point (Tower, Station or Drawbridge) to the point of vacancy, on his rest day. . . ." (Emphasis ours.)

It is contended, however, by the Carrier that the fact that Peters, after training for the job as he did, would cover the position for only four days, and then disqualify himself was no more foreseeable than it would have been had sudden illness or other incapacity rendered him unable to continue with the assignment; that by Peters' conduct an emergency was created and that, under Article 29 of the Agreement, Carrier was within its rights in assigning Gay, occupant of a regular relief position, to fill the vacancy at Glenbrook temporarily. There were no qualified spare men available.

Article 29 of the agreement is, in part, as follows:

> "Regularly assigned employes will not be required to work at other than their regular positions, except in cases of emergency."

The principal issue in this case is whether Carrier acted within its rights when it transferred Operator Gay to cover the vacancy at Glenbrook, or, whether it should have used the Claimants on their relief days for this work.

The Memorandum of Agreement upon which Claimants rely is by its express language made subject to Article 29 of the Agreement, and under that Article Carrier has the right to transfer an employe to meet an emergency situation.

The whole question involved here depends on what constitutes an emergency. Carrier has the burden of proving that an emergency did exist at Glenbrook Station.

An emergency is defined in Webster's Seventh New Collegiate Dictionary, published in 1963, as: "1. an unforeseen combination of circumstances or the resulting state that calls for immediate action."

The facts and circumstances presented here would indicate that a vacancy was about to occur at Glenbrook Station by reason of the occupant of the position having bid for another assignment; that Carrier had taken all reasonable preparation for covering the expected vacancy. The fact that Peters, after training for the job, would cover for four days and then disqualify himself was no more foreseeable than would have been his illness or other incapacity. Within the meaning of the definition herein cited, an emergency existed at Glenbrook, and the Carrier under Article 29 had a right to immediately fulfill the vacancy as it did.

See Award 16 of Special Award of Adjustment involving the same parties as concerned in the instant dispute and also Award 3528, Carter.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1966.