

Award No. 14194
Docket No. TE-13600

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

1. Carrier violated the terms of an Agreement between the parties, when on April 24, 1961, it permitted Extra Operator Orban Turner, who was assigned to an uncompleted temporary vacancy in Ravenna Yard Office, to displace junior Extra Operator P. H. Lutes from another temporary vacancy at Whitesburg, Kentucky.

2. Carrier shall, because of the violation set out in part one hereof, compensate Extra Operator P. H. Lutes for five (5) days, April 24 through 28, 1961, at the Whitesburg rate of pay account improperly displaced.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective June 1, 1958, and as amended.

The three (3) principals involved in this dispute are: (1) P. H. Lutes, hereinafter referred to as claimant. He is the junior extra operator involved. (2) O. Turner is the senior operator and (3) C. L. Murphy is junior to Turner but senior to Lutes. The terms "senior" and "junior" are made on the basis of the respective seniority standing of the principals as acquired in accordance with the provisions of Rule 21. The respective seniority dates of the principals are not on record. However, since no question is raised by Carrier as to the respective seniority status of the principals, the foregoing designated seniority standing of the principals is deemed to be correct.

Claimant, in accordance with the appropriate provisions of the parties' agreement, had, on a date not shown in the record, been assigned to a temporary vacancy on the third shift at Whitesburg, Kentucky. The record shows that he filled the vacancy April 17 through 21, the work week of the position, and thereafter observed the rest days thereof, namely, Saturday and Sunday, April 22 and 23. Under applicable rules, he would have returned to the tem-

record conclusively refutes this. The temporary vacancy at Whitesburg was advertised on December 11, 1961, almost eight months after the occurrence on which this claim is based. Murphy did not bid for it as he was at that time working a vacancy on first trick at GM Tower, Lexington, Kentucky, which he preferred. He worked at Lexington for two weeks, then moved to a vacancy at Ravenna on December 24, 1961, and stayed on vacancy there for the balance of the year. But Murphy did work vacancies at Whitesburg on November 27, 28, 29, 30, December 1, 4, 5, 6, 7 and 8, 1961, and up through July of 1962, has worked a total of 64 days on vacancies at Whitesburg. This leaves no room for reasonable doubt but that Murphy does work vacancies at Whitesburg when other vacancies he prefers are not available. There is no justification for the insinuation he does not.

Neither is there any justification for the contention of the employees that because the carrier offered to dispose of this claim on the property on a compromise basis by payment of 2½ days this was a recognition on part of the carrier that the claim was meritorious. The lengthy handling on the property contains repeated assertions of the carrier's position that the claim is entirely without merit. The offer was purely an effort to dispose of the dispute without necessity of both parties preparing lengthy submissions and burdening this board with having to decide the issue.

In conclusion carrier reiterates that Operator Lutes lost no time that he otherwise would have worked but for the technical violation of rule 29(a)7 and there is no basis under the rule or otherwise for making the penalty payment demanded. The claim should be denied in its entirety.

OPINION OF BOARD: This dispute involves the handling of extra operators under Rule 29 of the Agreement between the parties. The said Rule, in 29(a), (a) 1 and (a) 7, provides that in filling temporary vacancies from the extra board the senior available extra operator is assigned; under ordinary conditions, the man catching the vacancy is entitled to hold it for five working days before he is subject to displacement by a senior extra operator.

The seniority of the three extra operators involved in the instant claim, who were assigned to the extra board of seniority district No. 3, Eastern Kentucky Sub-division, is as follows:

Orban Turner — June 23, 1943
C. L. Murphy — January 21, 1951
P. H. Lutes — September 15, 1951

Junior operator Lutes caught a vacancy at Whitesburg, Kentucky, commencing April 17, 1961, worked it five days through April 21, 1961; April 22 and 23 were rest days of the position; under the rules Lutes was subject to displacement by a senior operator beginning Monday, April 24, 1961. Operator Murphy, second in seniority of the three men involved, worked a vacancy on the second trick at Ravenna, Kentucky, from April 4 through 18, 1961. When that vacancy closed, there was no other work available to Murphy who told the Chief Dispatcher when he was relieved after working April 18 that he intended to displace junior operator Lutes at Whitesburg beginning April 24, if no other work showed up in the meantime.

Senior extra operator Turner caught a vacancy on the first trick at Ravenna, Kentucky, beginning April 17, 1961, and worked it through April 23rd when he laid off. Extra Operator Murphy, who was still on the board April 23, was assigned to fill Turner's vacancy on the first shift the following day, April 24.

Extra operator Turner approved for work during the morning of April 24. At that time he and extra operator Murphy requested of the Chief Dispatcher that, instead of Turner returning to the vacancy at Ravenna and Murphy displacing the junior extra operator Lutes at Whitesburg, Murphy be permitted to remain on the vacancy at Ravenna and Turner displace at Whitesburg. This request was made because Murphy lives at Ravenna and would rather work there than elsewhere both because of the obvious convenience to him and to avoid away from home expenses. On the other hand, Turner is not married, has to pay room and board in any event and preferred Whitesburg since the assignment at this point can be performed while sitting down, whereas at Ravenna much of the work requires standing in connection with the operation of teletype machines. Turner likes to avoid work that requires standing because one of his legs is shorter than the other. Since Lutes stood to be displaced in any event, and the swap would be an accommodation to Turner and Murphy, it was permitted by the Chief Dispatcher.

In the course of handling the claim on the property, Carrier's Assistant Superintendent, C. W. Watson, wrote a letter to the Organization's General Chairman, Mr. K. B. Lane, dated August 4, 1961, which included, inter alia, the following statement:

"We must admit to the impropriety of permitting extra operator O. Turner to leave the vacancy at Ravenna and claim the one at Whitesburg, and we are quite in accord with your understanding of the application of Rule 29(a)7 in the current agreement. Those responsible for the mistake have been corrected."

From the preceeding paragraph it is clear, and the Carrier admits, that the Agreement was violated.

The claim will be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.