



Award No. 14221
Docket No. TE-13898

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that:

1. Carrier violated the Agreement between the parties when it failed to use W. S. Horan, Towerman, Mystic Junction, Massachusetts, to work on the position of first shift Train Director at Waltham Tower, Massachusetts, on August 22, 1961, a rest day of his position.

2. Carrier shall compensate W. S. Horan in the amount of a day's pay of eight (8) hours at the time and one-half rate for August 22, 1961.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1950, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

At time of claim, Chairman W. S. Horan was assigned to the second shift Towerman position at Mystic Junction, Massachusetts, with hours 2:00 P. M. to 10:00 P. M. daily, except rest days of Monday and Tuesday.

Ralph Ditmars was regularly assigned to a position of Leverman in Tower A at Boston, Massachusetts, with hours 6:00 A. M. to 2:00 P. M. daily, except rest days of Thursday and Friday.

Emery B. Smith is the regular occupant of the first shift Train Director position at Waltham Tower, Massachusetts. His hours are 6:00 A. M. to 2:00 P. M., rest days of Friday and Saturday. Mr. Smith occasionally works as a spare train dispatcher and on such occasions, Carrier has to fill his position at Waltham while he is absent working in that capacity.

During the period of August 18 through 23, 1961, Smith was absent from his assignment at Waltham, working as a train dispatcher. Carrier diverted Mr. Ditmars (which was apparently agreeable to Ditmars) from his assignment at Tower A Boston, to work Smith's position at Waltham.

The claim was declined on the basis that Mr. Ditmars, informed of the vacancy and of his own election, moved to cover the Train Director's position at Waltham Tower.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period August 18 to 23, 1961, the position of first trick Train Director at Waltham Tower, Massachusetts was temporarily vacant while the incumbent was used as a spare Train Dispatcher. There were no qualified spare telegraphers available to fill the vacancy and Carrier used Ralph Ditmars whose regularly assigned position was Leverman at Tower "A," Boston.

Claimant held the position of Towerman at Mystic Junction. He was senior to Ditmars and claims he should have been used on one of his rest days, when he was available, to fill the Waltham Tower position.

The record fails to show any contractual provision upon which a demand right would accrue to Claimant to be used on this assignment. His claim must, therefore, necessarily be denied. Award 13912.

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 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 11th day of March 1966.