

Award No. 14352

Docket No. TE-11522

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when on June 24, 1958, it required or permitted train service employes, not covered by the Agreement, to receive and copy a message.

2. Carrir shall compensate F. E. Hitchcock, senior idle extra telegrapher on the seniority district, in the amount of a day's pay (8 hours) at the straight time rate of \$2.228 per hour.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At 8:10 A. M. on June 24, 1958, train dispatcher W. J. Murphy transmitted a message to the Conductor and the Engineer of Train No. 91 at or near Graf, Iowa; the conductor and engineer received and copied the message; the transmission and reception was by means of telephone (radio). The message reads as follows:

"Oelwein June 24 1958

C&E No 91

Stop at Dyersville and get a car of roofing for Lamont at Dyersville and set the car out at Lamont.

REH"

The signature "REH" is the initials of R. E. Hagelberg, Chief Train Dispatcher. Train No. 91, acting upon the instructions, stopped at Dyersville, picked up the car and again stopped at Lamont and set out the car. The position of Agent-Telegrapher at Graf was discontinued several years prior to the date here involved.

This has reference to exchange of correspondence ending with your letter dated December 18 relative to your Claim No. D-89 in behalf of F. E. Hitchcock.

There is no question concerning the fact that claimant was actually a vacation relief worker and the records will verify the fact that he acquired no seniority under the Telegraphers' Agreement.

The facts concerning this dispute are also as set forth in my letter October 16 from which it appears obvious to the undersigned that there is no factual basis for the next last paragraph of your letter December 18.

Yours truly,

/s/ D. K. LAWSON
Assistant to President

Train 91 departed Fair Ground, 7:50 A. M., passed Graf about 8:25 A. M. and arrived Dyersville, 9:00 A. M. At 8:10 A. M. (time of alleged violation), Train 91 was between Fair Ground and Graf. No telegraphers are employed between Fair Ground and Dyersville.

On this property, it is the practice to employ college students for vacation relief work during the summer months. Under terms of Article 12 (c), Addendum No. 4 of current Telegraphers' Agreement (effective June 1, 1948, reprinted May 1, 1958), reading:

"A person other than a regularly assigned relief employee temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more than 60 days in a calendar year.
* * *

these vacation relief workers do not establish seniority rights, as they do not work more than 60 days in a calendar year. Claimant, who is a student at the University of Iowa during the school year, was employed for the summer of 1958 for vacation relief purposes, first service being performed on June 28, 1958, at South St. Paul, Minnesota, where he relieved one of the telegraphers who was on vacation. Claimant was used a total of approximately 40 days up to August 27, 1958, at which time he resigned in order to return to school. Claimant had no employment relationship whatsoever with the Carrier on date of instant claim (June 24, 1958), and as previously stated, did not enter service until some four days later, i.e., June 28, 1958.

OPINION OF BOARD: At the outset we are faced with a contention from the Carrier that this claim is defective because the Claimant held no seniority or other rights at the time the alleged violation occurred; and that he was employed solely for vacation relief purposes on another seniority district for a period of less than 60 days, therefore he never did acquire any seniority rights.

The Employes dispute the Carrier's assertions by counter assertions, without presenting any evidence of probative value to support them. Since the burden of establishing facts to support a valid claim lies with the Petitioner,

and he has not sustained the burden, this claim must be dismissed.

Dismissal of the claim being based on the procedural defect, we express no opinion as to the merits of the dispute.

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 for the seasons stated in the Opinion the claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

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