



Award No. 14378
Docket No. TE-14086

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway, that:

1. The Carrier violated and continues to violate the Agreement between the parties when it refused and continues to refuse to compensate D. E. Hamman account suspended from his regular assignment in the absence of any emergency on June 19, 23, 24, 25 and 26, 1960.

2. The Carrier shall now be required to pay D. E. Hamman eight (8) hours pro rata at the rate of his regular assignment and in addition thereto, time and one-half for all hours worked outside the hours of his regular assignment.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing an effective date of June 1, 1951, which is on file with your Board and by reference thereto is made a part hereof.

The Agreement herein referred to provides that an extra employe shall assume the work week and conditions of a regular assigned employe and cannot, except as hereinafter provided, be suspended therefrom.

Extra telegrapher D. E. Hamman was assigned to protect the Relief telephoner-towerman Position No. 9330, AT Tower, effective 7:59 A. M., June 11 to June 26, 1960, inclusive, with the following assignment:

Saturday and Sunday — 7:59 A. M. to 3:59 P. M.

Monday and Tuesday — 3:59 P. M. to 11:59 P. M.

Wednesday — 11:59 P. M. to 7:59 A. M.

Thursday and Friday — Rest days.

June 19 and on June 23, 24, 25 and 26, as well as the compensation that was allowed him for that service, was in strict conformity with the terms of Article X, Section 2-a of the Telegraphers' Agreement.

Second: The Third Division has consistently held that the unavoidable absence of extra employes to perform relief service constitutes an emergency which permits the use of regular assigned employes to perform relief service under emergency relief service rules such as Article X, Section 2-a of the current Telegraphers' Agreement. For example, see Award No. 3768.

Third: The resignation of Mr. Robertson, effective June 19, 1960, coupled with the unavoidable absence of available extra employes, also created an emergency within the meaning and intent of the emergency relief service rule, i.e., Article X, Section 2-a. See Awards 11 and 12 of Special Board of Adjustment No. 186.

Fourth: Since Telephoner-Towerman Position No. 6571 protected by Hamman on June 19, as well as Telephoner-Towerman Position No. 6572 that was also protected by the claimant on June 23, 24, 25 and 26, were 7-day positions and had to be filled each and every day, it would have been necessary to double the occupants of the two remaining Telephoner-Towerman positions at AY Tower in violation of the Federal Hours of Service Law if the claimant Mr. Hamman had not been used. The Third Division has consistently held that agreement rules cannot be interpreted nor applied in a manner that would countenance a violation of the Federal Hours of Service Law or any other law enacted pursuant to the police powers of the Government. Awards Nos. 4991, 4975, 6843, 8981, and others.

Yours truly,

/s/ L. D. Comer"

OPINION OF BOARD: Claimant, an extra telegrapher, was assigned to protect the relief telephone-towerman position commencing June 11, 1960. Because of a resignation dated June 16 and effective June 19, Claimant was suspended from the temporary vacancy to which he was assigned and required to protect the vacancy created by the resignation in addition to other assignments during this period.

Claimant, through the Organization, contends that Carrier violated Section 2-a of Article X of the Agreement by assigning him relief positions when no emergency existed, and makes claim for a day's pay plus time and one-half (for time worked outside his assigned hours) for June 19, 23, 24, 25 and 26.

The question in this dispute is whether an emergency existed so as to warrant Carrier's action.

At the outset we deny that portion of the claim relating to June 19, 23 and 24. It is clear from the record that an emergency was created on

June 19 by the resignation dated June 16 and effective June 19. The record further shows that Claimant worked June 23 and 24 (rest days) and was allowed payment for each of these days at the rate of time and one-half.

We are concerned, therefore, only with June 25 and 26.

This Board, in Award 10839, adopted the definition of emergency set forth in Webster's Dictionary which states that it is "an unforeseen combination of circumstances requiring immediate action."

Carrier contends that an emergency was created on the dates involved by circumstances which completely depleted the telegraphers' 10-man extra board. On Record page 47 the Carrier states:

"On June 23, 24, 25 and 26, one extra board telegrapher was protecting an advertised temporary vacancy, one was protecting an unadvertised temporary vacancy on the regular assignment of the District Chairman who was on leave of absence, two were relieving regularly assigned telegraphers absent account illness, and six (6) were engaged in protecting vacation relief and/or incidental vacation relief. The 1960 vacation schedule lists a total of 274 weeks of vacation to be protected, which would require an average of five (5) extra employees, but with the unexpected absence of two telegraphers on leave to attend two weeks' military training and the District Chairman also on leave of absence, in addition to the two telegraphers absent account illness, there were not sufficient extra board employees available to protect the vacancies on the dates here involved." (Emphasis ours.)

On the dates involved, we find that an emergency did not exist.

We cannot assume, as Carrier does, that absences due to military duty were "unexpected" in the sense that there was not sufficient notice of their taking place; nor can we assume that the leave of absence of the District Chairman was not known well in advance. Coupled with this was the fact that the two men who were absent because of two weeks' military leave had returned on June 20.

But even if there were no extra telegraphers available, this does not in itself constitute an emergency.

In Award 11044 (Dolnick), this Board interpreted the same rule between the parties and held:

"The mere fact alone that there were no extra telegraphers available is not an 'emergency' within the meaning of Article X, Section 2-a. There is no evidence in the record supporting the kind of sudden, unforeseen events which would permit Carrier to re-assign Claimants under that Article and Section of the Agreement."

We are satisfied that, unlike the situation in Award 11043, the resignation of Mr. Robertson on June 16 did not start a "chain of events which could not have been foreseen" on June 25 and 26.

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 as to June 25 and 26.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.