

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**G. Dan Rambo, Referee**

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**PARTIES TO DISPUTE:**

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

**ERIE-LACKAWANNA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad (Erie District), that:

1. Carrier violated the Telegraphers' Agreement when it used an employe not covered under the scope of The Order of Railroad Telegraphers to cover the vacation assignment of J. A. Cheshier, regular occupant of agent position at Bath, New York, August 7 through 18, 1961.

2. Carrier shall compensate Mr. J. A. Cheshier for eight (8) hours at one and one-half times the regular rate for each day (August 7 through August 18, 1961) of such violation.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. J. A. Cheshier, claimant, is the occupant of the agent's position at Bath, New York. He was scheduled for two weeks (ten days) of vacation from Monday, August 7 through Friday, August 18, 1961.

No extra men were available for assignment to Mr. Cheshier's position for the vacation period. Carrier, nevertheless, granted him his vacation period and in so doing assigned a clerk, Mr. D. K. Mosher, thereto.

Claim was filed on September 6, 1961 by District Chairman C. F. Abel, wherein he requested payment of eight hours at time and one-half rate for Mr. Cheshier for each day that an outsider was assigned to work his agent's position.

The above referred to claim letter is attached hereto as ORT Exhibit 1. Subsequent correspondence exchanged between the parties is also attached hereto, identified as ORT Exhibits 2 through 13.

During discussion of this case in conference it was Carrier's position that the instant claim was comparable to Docket No. TE-11287 now before the Third Division National Railroad Board for adjudication and it was our suggestion that the instant claim be held in abeyance pending decision of the Board in Docket No. TE-11287. This suggestion is again offered to you for consideration and you stated during conference that you would advise further with regard thereto. The understanding being, of course, that the disposition of Docket TE-11287 would control the instant case with the exception that if the case were to be sustained by the Board only straight time and not time and one-half would be paid the claimant.

It was further Carrier's position during conference that the employe who was used to perform the vacation relief work in the instant case was a bonafide relief worker as contemplated under the terms of the National Vacation Agreement. The situation here is no different than many other similar situations where employes who were not working in their own class and craft at the time were utilized to perform vacation relief work on positions covered by the Telegraphers' Agreement.

This procedure, which as stated is consistent with the National Vacation Agreement, has been followed on this property in granting vacations to all classes and crafts of employes without complaint, except as evidenced by Docket TE-11287, and without violation of any agreement for years on end. Carrier reiterates that there has been no violation of any rule of agreement in the instant case.

Still further, your attention is again directed to the fact that with this employe being on vacation he could not possibly be considered as available for the involved position.

If you are agreeable to holding the instant case in abeyance pending decision of Docket TE-11287, please advise. Otherwise, based upon the foregoing facts and reasons, Carrier's denial of this claim during conference is herewith confirmed.

Yours very truly,

/s/ F. Diegtel."

**OPINION OF BOARD:** This matter comes before this Board as companion to case Docket Number TE-11279 (Award 14432). The facts are identical thereto and the result must be the same.

The Agreement was violated and the claim is sustained at the pro rata rate.

**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 was violated.

AWARD

Claim is sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966.