

Award No. 14624
Docket No. TE-11489

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES 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 14, 1958 it improperly relieved L. J. Gustafson, first trick Telegrapher-Clerk at South St. Paul, Minnesota, on his rest day.
2. Carrier shall compensate L. J. Gustafson in the amount of eight hours' pay at the time and one-half rate.

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

At the time cause for this claim arose, L. J. Gustafson was the regularly assigned occupant of the first trick Telegrapher-Clerk position at South St. Paul, Minnesota, a seven-day position, with assigned hours 8:00 A.M. to 4:00 P.M., assigned rest days Saturdays and Sundays. The Saturday rest day was a part of a regular rest day relief position which relieved the third trick Telegrapher-Clerk on Thursdays and Fridays, the first trick on Saturdays, the second trick on Sundays and Mondays. W. O. Truax was the regularly assigned incumbent of this relief position. The Sunday rest day of the first trick, with which we are not here concerned, was a part of another rest day relief position.

At 4:25 P.M. on Friday, June 13, 1958, Mr. Truax notified the Chief Dispatcher, by telegram, that he would be unable to fill his assignment on Saturday, June 14, due to an appointment with a physician for an examination of an injury he had suffered a short time previously.

The telegrapher on duty at South St. Paul called Mr. Gustafson at his home early in the evening, informing him that he might be required to work on his Saturday rest day in the event no extra telegraphers were available. He indicated that he would be available, and about 10:30 P.M. called the

It is quite clear from the record that neither the Chief Dispatcher nor the Superintendent were notified of the rejection of their decision.

Yours truly,

/s/ D. K. Lawson
Asst. to President"

OPINION OF BOARD: Mr. L. J. Gustafson, regularly assigned occupant of the first trick Telegrapher-Clerk seven-day position at South St. Paul, Minnesota, with assigned rest days Saturday and Sunday, claims he was improperly relieved on Saturday, June 14, 1958.

The regular relief employe, Mr. W. O. Truax, was unable to relieve Mr. Gustafson on that day because of illness. Mr. T. A. Roerick, an extra telegrapher, who had worked Monday through Friday, June 9 through June 13 as part of a two week vacation relief stint at Pine Island, Minnesota, instead was called to relieve Mr. Gustafson on Saturday, June 14. Mr. Roerick then returned to Pine Island and worked from June 16 through June 20, completing his vacation relief assignment.

Claimant Gustafson contends that in the absence of both a regular relief employe and an available extra operator with less than 40 hours in his work week, the work on rest days should be assigned to the regular occupant of the position, according to Rule 8 of the Agreement. Since Mr. Truax, the regular rest day relief operator was not available, and there were no available extra operators with less than 40 hours of work, he, the regular occupant of the position, should have been asked to work on that day.

Carrier maintains that the claim should be barred because of non-compliance with the provision of Rule 23 (b) which reads as follows:

"If a disallowed claim or grievance is to be appealed, such appeal must be made in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision."

It asserts that Organization failed to notify the Chief Dispatcher and the Superintendent that their decisions on the claim were rejected.

The record includes the following correspondence between the parties during the handling of the dispute on the property. On July 10, 1958, the General Chairman wrote to the Superintendent appealing the decision of the Chief Dispatcher and a copy of this letter was sent to the Chief Dispatcher. On September 10, 1958, the General Chairman addressed a letter to the Assistant to President appealing the decision of the Superintendent, a copy of which was sent to the Superintendent. As in Award No. 14021, involving a similar situation, we find that forwarding a copy of the letter constitutes compliance with the requirements of Rule 23 (b). The claim is, therefore, properly before this Board.

Carrier also maintains that since an extra employe was used to fill a temporary vacancy, Rule 22 (i), rather than Rule 8, is applicable. The ques-

tion of the procedure to be followed on rest day assignments has been ruled upon in numerous awards, including Award No. 14096. As in these awards, we hold that the regular employe has priority where a regular assigned relief man is not available and where an extra employe has already worked 40 hours in the work week.

The claim is sustained, and compensation is awarded to L. J. Gustafson on a pro rata basis.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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