Award No. 14996
Docket No. TE-13212

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 PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that:

E. J. Troutman, Extra Block Operator, is entitled to a call of three (3) hours at the pro rata rate for being called and not used at Kips Tower on April 15, 1960. Regulation 4-I-1 governs.

EMPLOYES' STATEMENT OF FACTS: The claim as set forth in the Statement of Claim was denied by the Superintendent of Personnel on July 21, 1960, following a conference between the District Chairman and the Superintendent. The claim was duly appealed to the Manager, Labor Relations by the General Chairman under date of July 28, 1960. In accordance with the "Agreement Covering the Usual Manner of Handling Controversial Matters" between the parties, the Superintendent–Personnel and the District Chairman prepared the following "Joint Submission" for the appeal handling:

"THE PENNSYLVANIA RAILROAD
NORTHERN REGION
JOINT SUBMISSION
O. of R. T.

Buffalo, New York
December 30, 1960
3-C

Northern Region — Susquehanna District

SUBJECT: S-112. Claim of the General Committee of the Order of the Railroad Telegraphers on the Pennsylvania Railroad that E. J. Troutman, Extra Block Operator, is entitled to a call of three (3) hours at the pro rata rate for being called and not used at Kips Tower on April 15, 1960. Regulation 4-I-1 governs.

At a meeting on February 24, 1961, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations denied the claim by letter dated March 13, 1961, pointing out, in part, as follows:

"Regulation 4-I-1 provides for a three-hour payment when an employe is called for an assignment and upon reporting at the work location finds the assignment has been cancelled and he is sent home.

In the instant case, Claimant, upon reporting at the work location, had his assignment changed, not cancelled, and he performed service on the new assignment.

Under the circumstances present, Regulation 4-I-1 has no application in this case.

Claimant has been properly compensated for service performed and mileage traveled.

Claim for an additional three hour payment is without merit and is denied.

Furthermore, the Local Chairman, at the initial stage of handling, failed to reject the Supervising Operator's decision and under the provisions of Article V of the August 21, 1954 Agreement, we have no alternative but to consider this subject closed."

A copy of this denial letter is attached as Exhibit B.

Therefore, as far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether this claim has been properly progressed on the property in accordance with Article V of the August 21, 1954 Agreement and whether the provisions of Regulation 4-I-1 of the applicable Rules Agreement entitle Claimant to the compensation claimed.

Exhibits not reproduced.)

OPINION OF BOARD:

"JOINT STATEMENT OF AGREED UPON FACTS: The claimant, E. J. Troutman, was an extra block operator with headquarters at Buttonwood, Pennsylvania. On Monday, April 11, 1960, Troutman was given the following schedule of work:

Tuesday, April 12, 1960	3rd trick, Kase
Wednesday, April 13, 1960	3rd trick, Buttonwood
Thursday, April 14, 1960	3rd trick, Norca
Friday, April 15, 1960	3rd trick, Kips
Saturday, April 16, 1960	3rd trick, Hunlock

At approximately 3:00 P. M., on April 15, 1960, the third trick Operator at Buttonwood marked off. During the interval from 3:00 P. M. to 10:00 P. M. this date, five attempts were made to notify Troutman at his home that he should report to Buttonwood instead of Kips on third trick. On each attempt, Troutman's

wife answered the telephone, reporting that Troutman was not at home, and that she did not know where he could be located.

The only other Extra Operator, E. W. Hawk, could not be reached. Therefore, upon arriving at Kips on Friday night for the third trick, the claimant was instructed to report as soon as possible at Buttonwood to work the third trick vacancy. Troutman performed no work at Kips.

At Buttonwood, Operator W. H. Duncan, who was posting there, answered the telephones until Troutman arrived at 12:32 A. M., April 16, 1960.

POSITION OF EMPLOYES: On Monday, April 11, 1960, the claimant, E. J. Troutman, who is an extra block operator, was assigned five days' work, including the 3rd trick Kips position on April 15. Troutman was not at home and could not be reached to change his assignment to 3rd trick Buttonwood, but when he left home he intended to arrive at Kips to cover his assignment as ordered by WP. Troutman arrived at Kips prior to 11:00 P. M. and was told to proceed to Buttonwood and work 3rd trick Buttonwood on the 15th of April. We do not feel that once a man has been assigned a position that he has to keep himself available for a change in assignment. The schedule that Troutman was assigned to was one covering a one night vacancy at Kase, Buttonwood, Norca, Kips and Hunlock. These nights are the nights not covered by a relief schedule and are the same every week, so he had no thought of his assignment being changed, and so had no reason to check in with WP. The 2nd trick operator at Buttonwood who relays calls to Troutman's residence says that the first attempt to reach Troutman was at 6:00 P. M., instead of 3:00 P. M. Regulation 4-I-1 applies.

POSITION OF COMPANY: Regulation 4-I-1 reads as follows:

> 'An extra Group 2 employe called for service and not used shall, unless notified before leaving home not to report for service, be allowed 3 hours' pay at the straight time rate of the assignment for which he was called.'

The claimant, being an extra operator, is responsible to keep Management informed of his whereabouts when he is absent from his calling place for a length of time, regardless of having been given an assignment. Regulation 4-I-1 recognizes the fact that there may be a change made in the assignment of an extra man and states that the penalty is payable, 'unless the extra employe is notified before leaving home not to report for service.'

This sentence decidedly implies that it is the responsibility of the extra employe to make himself available for changes in instructions before reporting for service.

In making five attempts to contact the claimant, Management made a more than reasonable effort to notify the claimant of the change in location of his assignment on April 15, 1960.

Furthermore, there is nothing to be found in the Regulations or their interpretations that would prohibit Management from

changing the assignment of an extra operator after he had reported and before he had done any work at the initial location.

On April 15, 1960, the claimant was paid continuous time from 11:00 P. M., 4-15-60 to 7:00 A. M., 4-16-60, at the rate of $2.512 per hour (Buttonwood's rate). In addition, the claimant was allowed payment for 112 miles for the use of his automobile.

In view of the above, claim is properly denied."

I.

We must first determine whether, as Carrier contends, the claim is barred because there was a failure to comply with the procedural requirements of Article V, Section 1 (b) of the August 21, 1954 National Agreement.

Section 1 (b) of that Agreement reads as follows:

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

* * * * *

(b) If a disallowed claim or grievances is to be appealed, such appeal must be 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. Failing to comply with this provision, the matter shall be considered closed,** but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose." (Emphasis ours.)

Carrier argues that Claimant, through the Organization, failed to reject the decision of the Supervising Operator within the time prescribed, and the Board, therefore, does not have jurisdiction to consider the claim on its merits.

Claimant contends that the Supervising Operator (to whom claimant submitted his time card) was not an officer of the Carrier authorized to receive the claim, and failure to reject the Supervising Operator's refusal to honor the time card was an unnecessary and meaningless act within the purview of the "Agreement Covering The Usual Manner of Handling Controversial Matters" (which specifies that the usual manner of handling such disputes will begin with the "Superintendent."). The claim was filed with the "Superintendent–Personnel" within the 60 day limitation period.

Carrier rebuts this contention by alleging that the procedural steps outlined in the Handling of Controversial Matters Agreement no longer obtain because the positions enumerated in the Agreement have been abolished; and, further, that the practice on the property has been for the Local Chairman to reject the decision of the Supervising Operator. As evidence of such practice, Carrier calls our attention to a letter written by Petitioner's Gen-

eral Chairman to Carrier's Labor Relations Manager, which included the following:

> "Again, so far as the Local Chairman not rejecting decision of Supervising Operator, this question was not raised during handling on the Region, they evidently being of the opinion the Claim was properly handled."

While such language might be considered as some evidence of past practice, it is insufficient, standing alone, to constitute probative evidence.

II.

Moving to the merits, we are asked to determine whether Carrier violated Regulation 4-I-1 by refusing to pay Claimant for a three hour call.

Regulation 4-I-1 provides:

> "An extra Group 2 employe called for service and not used shall, unless notified before leaving home not to report for service, be allowed three (3) hours' pay at the straight time rate of the assignment for which he was called."

As indicated earlier, Claimant reported for his assignment at Kips because Carrier was unable to reach him prior to the commencement of the 3rd trick. When he arrived at Kips, he was re-assigned to Buttonwood, approximately 56 miles away. Claimant was paid for the 3rd trick at the Buttonwood rate, and was allowed payment for the use of his automobile.

We hold that Regulation 4-I-1 does not apply where the employe actually works during the period encompassing the assignment, even though the assignment was changed at the convenience of the Carrier. To hold otherwise would compel a strained construction of the Regulation in violation of the plain meaning of its language.

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 does not have jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.

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