Award No. 15008
Docket No. CL-15270

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5663) that:

(1) Carrier violated the rules of the Clerks' Agreement, when it assigned a furloughed Telegrapher to perform unassigned clerical rest day work at Bellows Falls, Vermont.

(2) Carrier shall now be required to pay each of the two Claimants a day's pay at punitive rates for each of the following dates listed, as follows:

(a) Mr. James P. Curtis, seniority 3-16-45, Yard Clerk, Baggagemaster, Station Helper, $30.5676 daily punitive rate for Mondays, March 9, 16, 23, 30, April 6, and 13, 1964, and for Tuesdays, March 10, 17, 24, 31, April 7 and 14, 1964, a total of 12 days at $30.5676 amounting to $366.8112.

(b) Mr. John P. Bresland, seniority 10-8-48, Chief Clerk, Cashier, Yard Clerk, Baggagemaster, Janitor, Freight Handler, $31.9176 daily punitive rate for Saturdays, March 7, 14, 21, 28, April 4 and 11, 1964 and for Sundays, March 8, 15, 22, 29, April 5 and 12, 1964, a total of 12 days at $31.9176, amounting to $383.0112.

EMPLOYE'S STATEMENT OF FACTS: Account job abolishments and consolidation of positions during the past several years, only two (2) clerical positions remain at Bellows Falls, Vermont.

At the inception of this claim they were assigned to Claimants as follows:

Job #1. Mr. J. P. Curtis, seniority 3-16-45, (subject to return of E. J. Foley, seniority 1-5-44) Yard Clerk, Baggagemaster, Station Helper, rest days—Monday and Tuesday, rated at $20.3784 pro-rata daily, Wednesday through Sunday, hours 9 P. M. to 5 A. M.

Job #2. Mr. J. P. Bresland, seniority 10-8-48, Chief Clerk, Cashier, Yard Clerk, Baggagemaster, Janitor, Freight Handler, rest days—Saturday and Sunday, rated at $21.2784 pro-rata daily, Monday through Friday, hours 7:30 A. M. to 3:30 P. M.

vacant. R. Simkewicz was a spare telegrapher and was qualified to cover the vacant position. He was therefore given a formal leave of absence as a result of agreement between this office and the General Chairman of the Order of Railroad Telegraphers.

"It is permissive to augment the force when no spare employes are available and there cannot be cause for a valid claim. Please see Award No. 9766.

AWARD

"Claim is denied.

"Yours very truly,

/s/ W. J. AHEARNE
W. J. AHEARNE
Director Labor Relations
and Personnel"

CARRIER'S STATEMENT OF FACTS: At Bellows Falls, Vermont, the clerical force at the time this claim arose, consisted of two seven-day positions —a combination chief clerk-yard clerk working on the first trick with Saturdays and Sundays off, and a combination office clerk-yard clerk position working on the third trick with Mondays and Tuesdays off. The four rest days—Saturday through Tuesday—were covered by a spare clerk.

On March 7, 1964, E. J. Foley, the owner of the third-trick position, sustained an injury which made it necessary for him to lay off. J. P. Curtis, the spare employe who covered the rest days of the two positions, moved up to the temporary vacancy. There were no qualified available spare employes to cover the resulting relief job.

It was estimated that the period of convalescence for E. J. Foley would be approximately six weeks. A spare operator, R. Simkewicz, who was familiar with the work of the positions to be covered, requested and was granted a leave of absence effective March 6, 1964, to cover the work.

The claimant, J. P. Bresland, on the first trick, and the former relief employe, J. P. Curtis, who had moved onto the third trick position of Mr. Foley, claimed that they should have been used on their rest days on the basis that "job was covered by a man who is on the Operators' roster".

In view of the fact that an ORT employe vacated that class to work while on a formal leave of absence from the Telegraphers' Agreement, the claim was declined.

OPINION OF BOARD: This dispute involves the right of the Carrier to use a furloughed telegrapher, who had no prior seniority rights under the Clerks' Agreement, on the unassigned rest days of two positions in preference to the regular employes.

The facts are not in dispute: Prior to March 7, 1964, there were two seven-day clerical positions at Bellows Falls, Vermont. Claimant Curtis occupied Job #1, Wednesdays through Sundays, with rest days on Mondays

and Tuesdays. Claimant Bresland occupied Job #2, Mondays through Fridays, with rest days on Saturdays and Sundays. Prior to March 7, Claimants had worked the rest days of their positions at punitive rates.

On March 7, and thereafter up to and including April 14, 1964, Carrier used Richard Simkewicz, a furloughed telegrapher, on the unassigned rest days of both positions.

Rule 17, Section (e), is applicable and provides:

> "Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty hours of work that week; in all other cases by the regular employe."

The Organization claims that since there were no available extra or unassigned employes the regular employes were entitled to the work. Carrier regarded Simkewicz as an available extra or unassigned employe.

The proper interpretation of Rule 17(e) was determined on this property between these parties in Award No. 5558 (Carter) which held that an available extra or unassigned employe was a person holding seniority rights under the Clerks' Agreement. While most of the 12 claims decided in that case involved newly hired employes who had never previously worked for the Carrier, Case No. 7 is one in which we held that an available employe holding seniority as a Freight Handler but none under the Clerks' Agreement was identical in principle as a new employe hired for the occasion.

The Carrier argued that the purpose of the National 40 Hour Week Agreement which was responsible for the insertion of Rule 17(e) was not to obtain more pay for employes through overtime on the 6th and 7th day of the week and that if Carrier could not utilize other bona fide employes to avoid overtime pay this purpose would be subverted. While this may be true, Rule 17(e) expressly provides for the use of the regular employe for overtime work. Thus, it contemplates and even requires the use of regular employes at overtime rates under certain circumstances, to wit, when there are no available extra or unassigned employes.

Carrier argued that the definition of "employe" is to be found in the Railway Labor Act and includes "every person in the service of a carrier . . . who performs any work defined as that of an employe or subordinate official . . ." We think that definition is inapplicable. We are here concerned with contractual rights and obligations arising under the Clerks' Agreement and not under the Act. By its terms the Agreement provides that its rules "shall govern the hours of service and working conditions" of certain classes of employes represented by the Organization (Rule 1, Scope—Employes Affected). It applies to no other employes of the Carrier and it is therefore, immaterial whether the person newly assigned was recruited from off the street or from employes other than those represented by the clerks. If a broader interpretation of the word "employe" was desired under this Agreement, language was available to do so. Moreover, Award No. 5558 established this interpretation in 1951, since when there was ample time to amend it if a different interpretation had been desired.

Following Award 13697 (Wolf) the pro rata rate will be allowed instead of the punitive 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 herein; and

That Carrier violated the Agreement.

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December 1966.

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