

Award No. 15136  
Docket No. TE-11952

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Daniel House, Referee

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**PARTIES TO DISPUTE:**

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

**HUDSON AND MANHATTAN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson & Manhattan Railroad that:

1. Carrier violates and continues to violate the agreement between the parties when it suspends R. Grabowski from work on work days of his regular assignment and requires him to perform service on his assigned rest days at the straight time rate.

2. Carrier shall be required to compensate R. Grabowski in the amount of a day's pay (8 hours) at the rate of his regular assignment on each work day suspended beginning with Monday, September 1, 1958, and continuing thereafter until the violation is corrected; and, compensate him for eight hours at the time and one-half rate of the position occupied for each rest day on which he is required to perform service beginning with Thursday, September 4, 1958, and continuing thereafter until the violation is corrected.

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

R. Grabowski holds a regular assignment as a towerman under the Telegraphers' Agreement, with a work week beginning on Saturday and assigned rest days of Thursday and Friday. He is qualified as an acting train dispatcher under Article XXI of the current Agreement effective June 21, 1953. Article XXI of the Agreement reads as follows:

**"SUPERVISORY  
OR OFFICIAL POSITIONS**

(a) Employees promoted directly from positions covered by this agreement to official or supervisory positions, including train dispatchers, with the Company or to a position with The Order of Railroad Telegraphers will retain and accumulate seniority. Such employees

5, 1958, days on which he was employed as a Dispatcher. The basis of this claim is that Thursday and Friday were Grabowski's rest days when he was employed as a Towerman, and that therefore he should be paid at the time and one-half rate even when not so employed, but when working in any capacity on said days. The claim also makes a specific demand regarding pay for Monday, September 1, 1958 and Tuesday, September 2, 1958. Herein it is demanded that the claimant receive a day's pay (8 hours), for each of these days, on the ground that he was suspended from working in his regular capacity as a Towerman. These latter days were, as is stated above, Grabowski's rest days on his tour as a Dispatcher, and were a part of the tour of duty which had been assumed by him.

By a letter dated October 13, 1958, Towerman Grabowski submitted a time claim based upon the situation detailed above. Carrier, by letter dated November 10, 1958, rejected Towerman Grabowski's claim on the ground that on the days in question his service was governed by the applicable agreement with the ATDA. The General Chairman of the ORT, by letter dated November 13, 1958 appealed the issue to Carrier's General Superintendent the General Superintendent denied the claim by letter dated January 20, 1959.

The issue presently before the Board is whether a Towerman who has elected to be employed as an Acting Train Dispatcher is governed by Carrier's agreement with the ATDA, or is still governed pursuant to Carrier's agreement with the ORT. It has been the Carrier's position that it is not subject to the national time claim rule with ORT. The Organization has recently argued that the national rule, including the provision for continuing claims, is applicable. In any event the claim is not of a true continuing nature because the circumstances are not such that the dates involved are continually recurring.

**OPINION OF BOARD:** Claimant held a regular assignment under Telegraphers' Agreement and had qualified under that Agreement for assignment as acting train dispatcher. He was assigned to work as a train dispatcher for a week. The rest days of his train dispatcher position were regular work days of his Telegrapher's position. He was not permitted to work those days on his Telegrapher's position, and he was paid only straight time for work as a train dispatcher on the rest days of his Telegrapher's position.

Except for the fact that Claimant's position under Telegraphers' Agreement was in this case not bulletined, the facts here are basically the same as those we dealt with in Award 13009 (Referee West) between the same parties. That award cites with approval the reasoning expressed in Awards 3674 and 6561 and says:

"... Claimant, having elected to fill a dispatcher's position, thereby came under the Dispatchers' Agreement, and could not, at the same time, demand rights against this Carrier under the Telegraphers' Agreement. Once his old position as towerman was bulletined, he ceased to be entitled to the benefits of a regularly assigned telegrapher. Any reversionary rights that he has to his old position and under the Telegraphers' Agreement are suspended until he terminates his tour of duty as a train dispatcher..."

The fact that Claimant's position under Telegraphers' Agreement was not bulletined in this case is not a reason for us to depart from the conclusion

expressed in the first sentence quoted above: From the time Claimant began to fill the dispatcher's position until he terminated his tour of duty on that position, he came under the Dispatchers' Agreement, and during that time he could demand no rights under the Telegraphers' Agreement; Claimant's filling of the dispatcher position, not a bulletining of his Telegrapher position initiated the suspension of his demand rights under the Telegraphers' Agreement.

**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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1967.