

Award No. 15138
Docket No. TE-11954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

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 violated and continues to violate the agreement between the parties when it requires J. Neville to perform service on his assigned rest days at the straight time rate.
2. Carrier shall be required to compensate J. Neville at the time and one-half rate of the position occupied for eight hours for each rest day on which he was required to perform service beginning with Friday, October 3, 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.

J. Neville holds the regular assignment as Towerman under the Telegraphers' Agreement, with a work week starting on Saturdays and assigned rest days of Thursdays and Fridays. He is qualified as an Acting Train Dispatcher under Article XXI of the current agreement, effective June 21, 1953. Article XXI reads as follows:

"ARTICLE XXI.

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 who can no longer hold positions in the promoted class because of force reduction, or who are physically disqualified from

CARRIER'S STATEMENT OF FACTS: The Hudson & Manhattan Railroad Company is presently a Debtor in reorganization proceedings under the Bankruptcy Act in the United States District Court for the Southern District of New York, and Herman T. Stichman is Trustee of the Debtor (hereinafter "Carrier").

ORT is making a claim on behalf of Towerman J. Neville who, at his election was also an acting train dispatcher. The basis of the claim is that the Carrier has violated and continues to violate the applicable agreement between the parties when it requires the said Neville to work at the straight time dispatcher rate, when he is employed as a dispatcher on what would have been a rest day had he been employed as a Towerman. Claimant seeks compensation at the time and one-half rate for each rest day, beginning with October 3, 1958, on which he acted as an acting train dispatcher.

By a letter dated October 14, 1958, Towerman J. Neville submitted a time claim for four hours' pay, claiming that he was entitled to this sum by reason of his employment as an Acting Train Dispatcher on October 3, 1958, which day was a rest day as a Towerman pursuant to the applicable agreement with the Order of Railroad Telegraphers. Towerman Neville had been paid on the basis of the straight time rate for his employment on the day in question, pursuant to the applicable agreement between the Carrier and the American Train Dispatchers Association. By his claim for an additional four hours' pay he sought to be remunerated at the time and one-half rate.

Carrier, by letter dated November 13, 1958, rejected Towerman Neville's claim, on the ground that on the day in question his service was governed by the applicable agreement with the ATDA. The Carrier also contended that the claim could not be applicable to subsequent alleged violations, on the ground that the circumstances are not such that the dates involved are continuously recurring. The General Chairman of the ORT, by letter dated November 20, 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 provisions 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: The facts and parties in this case, except for the name of the Claimant and the specific dates, are basically the same as those we dealt with in our Award 15135. As we did there, we will deny the Claim here.

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 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.