Award No. 15541
Docket No. TE-14586

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul & Pacific Railroad, that:

1. Carrier violated Schedule Rule 14 (b) of the parties' Agreement when it required Agent-Operator R. E. Sherman, a regularly assigned employe, to perform relief work at Austin, Minnesota, July 23, 24, 25, 26, 27, 30, 31, August 20, 29, 30, 31, and September 4, 1962.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate R. E. Sherman a minimum of eight (8) hours at the straight time rate of the Agent's position at Lime Springs, Iowa, in addition to payment made for work performed at Austin, Minnesota, for each of the dates set forth in paragraph one hereof.

3. Carrier shall, in addition to the foregoing, allow claimant $2.00 for each calendar day as per Rule 14 (b) plus traveling expenses for each of the dates set out in paragraph one hereof.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective September 1, 1949, and as amended. Copies of said Agreement, as required by Law, are assumed to be on file with this Board and are, by this reference, made a part hereof.

At Page 68 of said Agreement (Rule 27 — Wage Scale), under the caption District (seniority) No. 15 is listed the position existing at Lime Springs, Iowa, on the effective date thereof. The listing for ready reference reads:

"Station	Title	Hourly Rate
* * * * *		
Lime Springs	Agent	$1.52
* * * * * "		

On each of the dates of the instant claim, i.e., July 23, 24, 25, 26, 27, 30, 31, August 20, 29, 31, 31 and September 4, 1962, claimant Sherman made request to fill the "AX" position at Austin which was vacant account the regularly assigned occupant thereof, viz., employe Peck, working as train dispatcher and inasmuch as there were no extra telegraphers available to perform the service required on the "AX" position, claimant Sherman was permitted to perform such service for which he was compensated at the higher rate of the "AX" position.

During the time claimant Sherman worked on the "AX" position at Austin, his wife filled his agency position at Lime Springs and was compensated accordingly.

There is attached as Carrier's Exhibit A copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. R. M. Olson, General Chairman, under date of March 7, 1963.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, was required or permitted to absent himself from his regularly assigned position to work a relief assignment. This, Petitioner claims, violated Rule 14 (b) of the Agreement which reads:

> "(b) Regularly assigned employes shall not be required to perform relief work except in cases of emergency. When required or permitted to perform such service, they shall receive the rate of the position upon which relieving or the rate of the position from which taken, whichever is the greater, including actual loss in commissions. If any such employe would receive time and one-half rate through the application of Rule 11, on any day such service is performed the time and one-half rate shall apply on that day or days. In addition thereto such employe shall be allowed $2.00 per calendar day for expenses while away from his regular assigned station.
>
> The expense provisions of this rule do not apply when appointed upon application to positions covered by Rule 5-(a) nor when performing relief service at a station or office located in a city where the employe is regularly assigned.
>
> Regularly assigned employes shall be reimbursed for the cost of meals and/or lodging incurred traveling to the point where the relief work is performed; also when returning to assigned station after being relieved of such work."

The first sentence of the first paragraph of Rule 14 (b) makes clear that the remainder of the paragraph is applicable only in cases of emergency assignments. Inasmuch as Petitioner avers that there was no emergency giving rise to Claimant's assignment to the relief position and the record proves that averment, we find that Carrier violated the injunction prescribed in the first sentence; and, the remainder of the paragraph is not pertinent. The Claim for compensation as prescribed in the paragraph must be denied.

The second paragraph of Rule 14 (b) is not involved.

The third paragraph of the Rule is generally applicable to all regularly assigned employes. It is not confined to emergencies. Consequently, we find

that Claimant is entitled to reimbursement as provided for in that paragraph. We still sustain the Claim to that extent and deny it in all other respects.

The Claim as presented to this Board as well as the Claim processed on the property is predicated solely on alleged violation of Rule 14 (b). In its Submission and arguments before this Board Petitioner cites other provisions of the Agreement which it submits supports a finding that the Claimant is entitled to the compensation prayed for in the Claim. We are constrained by the Claim as presented. We have no jurisdiction to enlarge it.

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 Carrier violated the Agreement.

Claim sustained in part and denied in part to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1967.

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