Award No. 15615
Docket No. TE-14428

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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:

J. R. Beckman was used on third (3rd) trick West Manchester, August 12 and 13, 1961, at the overtime rate of pay, violating Regulation 5-G-1 (i) and Memorandum of Understanding dated January 30, 1961. Claim is made that A. Velica be paid eight (8) hours per day at the time and one-half rate of pay for August 12 and 13, 1961, available and not used as provided for under Regulation 5-G-1 (i) and Memorandum of Understanding dated January 30, 1961. Total amount due $61.44.

EMPLOYES' STATEMENT OF FACTS: Claimant, Mr. A. Velica, was the regular incumbent of regular Relief Position No. 25, and during the period involved was assigned and did work as follows in his work week commencing Monday, August 7, 1961:

Monday	August 7, 1961	Third Shift	Hewitt
Tuesday	August 8, 1961	Third Shift	Greenville
Wednesday	August 9, 1961	Third Shift	Glenn
Thursday	August 10, 1961	Third Shift	Newman
Friday	August 11, 1961	Third Shift	West Manchester
Saturday	August 12, 1961	Rest Day	
Sunday	August 13, 1961	Rest Day	

Extra Block Operator, Mr. J. R. Beckman, during the same period, worked as follows:

Monday	August 7, 1961	Third Shift	West Manchester
Tuesday	August 8, 1961	Third Shift	West Manchester
Wednesday	August 9, 1961	Third Shift	West Manchester
Thursday	August 10, 1961	Third Shift	West Manchester
Friday	August 11, 1961	Third Shift	Ridgeville
Saturday	August 12, 1961	Third Shift	West Manchester
Sunday	August 13, 1961	Third Shift	West Manchester

Under date of August 12 and 13, 1961, Claimant submitted time claims for said dates to the Assistant Supervising Operator, requesting payment of eight punitive hours for each date. The claims were denied by the Assistant Supervising Operator under date of August 23, 1961.

On October 25, 1961, the District Chairman, Order of Railroad Telegraphers, submitted a claim, identical to that quoted at the beginning of this Submission, to the Superintendent, Personnel, Buckeye Region. The Superintendent, Personnel denied the claim by letter of December 23, 1961. Subsequently, at the request of the District Chairman, a Joint Submission covering the matter was prepared, a copy of which is attached as Exhibit A.

At a meeting on September 6, 1962, 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 of September 28, 1962. This matter was the subject of further correspondence between the General Chairman and the Manager, Labor Relations, and by letters dated March 14 and May 20, 1963, the latter reaffirmed his denial of September 28, 1962. The Manager's letters of September 28, 1962, March 14 and May 20, 1963, are attached as Exhibit B-1, B-2, and B-3.

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether Claimant had a demand right to be used, under any provisions of the Rules Agreement or of any other agreements or understandings between the parties, to work the third trick operator position at West Manchester Block Station on August 12 and 13, 1961, and whether Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case is a regular 3rd trick, 5 tower, relief block operator on the former Columbus Division seniority district. His schedule is as follows:

Monday – Hewitt
Tuesday – Greenville
Wednesday – Glenn
Thursday – Newman
Friday – West Manchester

The Claimant's home is in Richmond, Indiana and headquarters for gasoline mileage is Newman tower. On Saturday and Sunday, August 12 and 13, 1961, an extra operator was used on his 6th and 7th days of that week to work the 3rd trick at West Manchester. The vacancies on these dates were the result of the regular 3rd trick and regular relief man being on vacation. Claimant contends that he should have been used on his rest days in preference to the extra man, citing Regulation 5-G-1 (i) and the Memorandum of Understanding of January 30, 1961 as his authority.

Regulation 5-G-1 (i) states that:

"Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed

by an available extra employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The Memorandum of Understanding, dated January 30, 1961, provides for assignment of work on an overtime basis as follows:

"A. Work not a part of any assignment and vacancies arising by reason of absence of regular relief employe:

(1) Incumbent of position who is observing his rest day.

(2) Other available, qualified employes regularly assigned at the location, in seniority order.

(3) Qualified, extra employe who has forty hours' work in the week.

B. Vacancies arising by reason of absence of a regular employe on other than rest day:

(1) Available, qualified employe regularly assigned at the location in seniority order.

(2) Qualified, extra employe who has forty hours' work in the week.

(3) Any qualified employe."

It is the contention of the Petitioner that Claimant comes within the purview of Item (2) in paragraph A and Item (1) in paragraph B, and that the employe used comes under Item (3) in paragraph A and Item (2) in paragraph B. Hence, Claimant was entitled to work on both dates.

The Carrier contends that the Claimant can only be used on an overtime basis at Newman Tower, and that he is not regularly assigned at West Manchester by virtue of working at that location one day per week.

We conclude that in accord with the Memorandum of Understanding of January 30, 1961, there were no extra Group 2 employes available who had less than 40 hours' work in the work week, that it was known for more than 4 hours in advance that each vacancy would occur, and that the use of the Claimant would not have resulted in a violation of the Hours of Service Law.

At West Manchester, on August 12, 1961, there was a vacancy, the third shift scheduled to be worked by White as the regularly assigned relief employe arising because of the absence of the regular relief employe, i.e., White. There was no extra employe available with less than 40 hours in his work week; hence, the assignment became one which involved filling on an overtime basis. Under A (1) of the aforecited Memorandum, the regular incumbent of the position observing his rest day would have had the first claim to the work. But, he was absent also; hence, the next employe entitled to the work as defined in paragraph A (2)

"Other available, qualified employe regularly assigned at the location, in seniority order."

was the Claimant. He was available, regularly assigned at the location and eligible. He should have been called.

August 13, 1961 was a scheduled work day of Morris on the 3rd shift at West Manchester, a position to which he was regularly assigned. He was absent; hence, there was a vacancy "arising by reason of absence of a regular employe on other than rest day." There was no extra employe available with less than 40 hours in his work week; consequently, the assignment had to be filled on an overtime basis. Under B (1) the position was subject to being filled by the:

> "Available, qualified employe regularly assigned at the location in seniority order."

The Claimant was just such an employe and should have been called. The Claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.

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