

Award No. 15616

Docket No. TE-15102

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:

W. J. Martin, Block Operator, MJ Tower, Burlington, New Jersey, is entitled to receive eight (8) hours' pay at the prevailing rate of pay on May 7 and 21, 1962, account available for duty and not called and/or used. This is in violation of Rule 5-G-1, paragraph i.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. W. L. Martin, was the regularly assigned, second shift (3 P. M.-11 P. M.) Block Operator at MJ Tower, Burlington, New Jersey. His work assignment begins at 3 P. M. each Tuesday, working through to 11 P. M. Saturday, with rest days of Sunday and Monday. The shift is filled six days per week, five days by the Claimant and on the seventh day (Monday) by an extra man. The position is not filled on Sunday, the sixth day of Claimant's work week.

On the Monday of May 7 and again Monday, May 21, 1962, the Carrier assigned Extra Block Operator L. Bryszewski to fill the unassigned rest days of the Claimant. Regulation 5-G-1 (i) of the Agreement between the parties provides:

"(i) 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 or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

To the extent extra or furloughed men may be utilized, their days off need not be consecutive; however, if they take the assignment of a regular employee, they will have as their days off the regular days off of that assignment."

letter of August 22, 1962. Following discussion the Assistant Regional Manager in a letter dated October 18, 1962, denied the claim. The District Chairman rejected this decision and requested preparation of a Joint Submission. A copy of the Joint Submission is attached as Exhibit A.

The General Chairman then presented the matter to the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property, at a meeting on July 12, 1963. The Manager denied the claim by letter dated September 4, 1963, a copy of which is attached as Exhibit B.

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether Regulation 5-G-1 (i) granted the Claimant a demand right to work at MJ Block Station on May 7 and 21, 1962, at the time and one-half rate of pay in preference to an Extra Block Operator, who was available at the pro rata rate of pay, and whether the Claimant is entitled to the compensation requested.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts involved in this dispute are not in question. The second trick at MJ Block Station on Mondays is not covered by a regular relief assignment; therefore, it is work "which is not a part of any assignment." The Claimant was the "regular employee" who was observing a rest day. The extra block operator was used on the second trick at MJ on May 7 and 21, 1962, and was compensated at the pro rata rate of pay. The extra man eventually worked in excess of 40 straight time hours in each of his work weeks beginning May 7 and 21, 1962.

The question posed is whether under Regulation 5-G-1 (i), quoted below, the Claimant had a demand right to work the second trick at MJ Block Station on May 7 and 21, 1962, at the time and a half rate in preference to the extra man at the pro rata rate because the extra man eventually worked in excess of 40 hours in his work week:

"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 or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Claimant in this case is in effect saying that Carrier should have foreseen that the extra employee would have worked in excess of 40 hours in each of the weeks. At the time he was given the assignment, it was the beginning of his work week. Had the Carrier refused to give him the assignment based on an estimate that he would work 40 hours in each week, and then was later proven wrong, the extra employee would presumably have the basis for a Claim.

It is our conviction that such an interpretation of the above quoted language could not have been in the minds of the parties when they mutually agreed to it. Such a construction is strained, and, in our judgment, unreasonable.

We will dismiss the Claim.

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.

AWARD

Claim dismissed.

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.