

Award No. 15797
Docket No. TE-14300

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad, that Carrier violated the parties' Agreement because:

CLAIM NO. 1

(a) It assigned a junior extra employe (McDonald) to a vacancy on First Shift, Signal Station 236, Boston, Massachusetts, for a period between December 23, 1961 and January 9, 1962, whereas a senior extra employe (Geary) was available and entitled to such assignment.

(b) Carrier shall now be required to compensate senior extra employe J. Geary for a day's pay for each day during the above specified period that he was denied the opportunity to work the assignment to which entitled, at the rate of the position.

CLAIM NO. 2

(a) It wrongfully assigned an extra employe (Geary) to a vacancy on Position No. 15, for a period between January 1 and 5, 1963, thereby providing 5 days' work for the extra man standing third on the extra list (McDonald) and causing the extra man standing second on the extra list (Valle) to be unassigned for the period involved.

(b) Carrier shall now be required to pay R. Valle a day's pay for each of the five days he was denied opportunity to work, at the rate applicable to Relief Position No. 15 for each day.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. P. Laracy, an Operator, occupied a regular relief position (Relief Position No. 15) which was assigned to work at Boston, Massachusetts as follows:

OPINION OF BOARD: Claimant Geary was a senior spare (extra) operator on Carrier's Boston Seniority District. Monday, December 18, 1961, through Friday, December 22, were five paid days of his vacation, and he worked on no assignment on those days. On Friday, December 22, he called Carrier's Chief Train Dispatcher's office twice to inform that office that he would be available for work on the next day and to ask as to his assignment for December 23. In each case he was informed that Carrier considered him unavailable for assignment on December 23 and 24 because those were his rest days.

Employees' Claim No. 2 cannot prevail unless Claim No. 1 prevails. For Claim No. 1 to prevail, we would have to find that Claimant Geary was available for and entitled to assignment on Saturday, December 23rd. If, as Carrier contends, the two days following the five paid days of vacation have as a practice on this property been considered rest days of the employee's vacation, then Geary was not available for nor entitled to the assignment on Saturday, December 23rd. Carrier's Director of Labor Relations and Personnel asserted in his letter of August 6, 1962, denying the claim:

"In the first instance no rule requires, nor has it been the practice, to utilize spare men for extra work within their vacation period. On the contrary, the practice has been to carry the extra man for a vacation week of five work days and two rest days . . ."

We also find in the record letters written in 1957 by Superintendent Duggan to the Local Chairman and to the General Chairman which support that the practice on this property was to consider that extra employees were not deemed available for assignment on the two days following completion of the five paid vacation days of his vacation. Nowhere in the record do we find that the Employees have denied that this was the practice. This practice clarifies the ambiguity about Claimant Geary's "availability" for assignment on December 23rd: we find that he was not available.

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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1967.

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