



Award No. 15947
Docket No. TE-14801

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (Southern District), that:

1. Carrier violated the terms of the Agreement between the parties when it required L. C. Zimmerman to suspend work on his regular assignment at H. V. Tower, Columbus, Ohio, on Saturday, December 8, 1962.

2. Carrier shall compensate L. C. Zimmerman for eight (8) hours at the pro rata rate of his position at H. V. Tower, Columbus, Ohio, representing the time lost.

EMPLOYEES' STATEMENT OF FACTS: Claimant L. C. Zimmerman is the occupant of a regular relief assignment at H. V. Tower, Columbus, Ohio. His regular assigned work week is to protect the first shift position on Saturday and Sunday, the second shift position on Monday and Tuesday and the third shift position on Wednesday. His assigned rest days are Thursday and Friday. After observing his assigned rest day, Thursday, December 6, 1962, the Carrier required him to work the second shift position at H. V. Tower on his rest day, Friday, December 7th, 1962. The Carrier paid him eight hours at time and one-half for the work performed on December 7th. However, because of the work on December 7th during the second shift hours, the Hours of Service Act prohibited his use on the first shift position on December 8th between 7:00 A. M. and 3:00 P. M., which were his regular assigned hours and the Carrier has refused to pay him eight hours' pay for his regular assignment on December 8th, 1962.

The claim was appealed to the highest officer designated to handle claims and grievances and declined by him. The claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the parties, dated February 1, 1962, copy of which is on file in the

offices of the Third Division, which is applicable to the territory involved herein, and, by this reference, is made a part of this submission.

Operator L. C. Zimmerman, claimant in this case, was the regularly-assigned relief operator at "HV" Tower, Columbus, Ohio, working the first trick on Saturday and Sunday, second trick on Monday and Tuesday, and the third trick on Wednesday, with Thursday and Friday as rest days.

On Friday, December 7, 1962 (second of Mr. Zimmerman's relief days), the regularly-assigned second-trick operator at "HV" Tower laid off sick. There were no extra operators available who had not had forty hours of work during the week. It was, therefore, necessary to call Mr. Zimmerman to work this second-trick vacancy, for which he was paid the punitive rate. Under the Hours of Service Law, this prevented him from working the first day of his work week on the first trick on Saturday, December 8, 1962. The claim progressed here is for that day.

OPINION OF BOARD: The Claimant here was scheduled to work on December 8, 1962. He was the occupant of a regular relief assignment at H. V. Tower. His regular assigned work week is to protect the first trick position on Saturday and Sunday, the second shift position on Monday and Tuesday and the third position on Wednesday. Assigned rest days are Thursday and Friday.

Carrier required him to work the second shift position at H. V. Tower on his rest day, Friday, December 7, 1962. He was paid time and one-half for the work on December 7.

Because he did work, at Carrier's request, on December 7 he was unable, due to the Hours of Service Law, to work his regular first shift assignment on December 8, 1962, between 7:00 A. M. and 3:00 P. M.

Organization contends Carrier should reimburse him for the shift he lost on his own assignment, December 8, 1962, by reason of the Hours of Service Law.

Organization asserts the Claimant was required by the rules to protect the extra work, and he should not, therefore be penalized for fulfilling the obligation.

This Board, in Award 4975 (Boyd) held:

"The claim is valid if the claimant lost any time to which he had a right under the Agreement. On the 4th he could have started on his new assignment at 3:00 P. M. but to have done so would have subjected the Carrier to the penalty provided in the Hours of Service Law, a Federal statute. Agreements must be construed with reference to validly enacted laws . . . The enforcement of a provision of a contract must yield to the superior authority of the law; and if the Carrier was forbidden by law to work the claimant at 3:00 P. M. on the 4th, then the claimant has not lost 'time' as contemplated by Article 29 (b) on that day."

We will follow that Award and deny 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; 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 21st day of November 1967.