

Award No. 16254
Docket No. TE-15408

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(SUPPLEMENTAL)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES 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 Railroad (Southern District), that:

1. Carrier violated the Agreement between the parties when on Sunday, October 27, 1963 it failed to assign M. R. Williams to vacancy in "MI" Office, Indianapolis, Indiana, on the first shift.

2. Carrier shall compensate M. R. Williams for eight hours at time and one-half rate for Sunday, October 27, 1963.

EMPLOYES' STATEMENT OF FACTS: Extra Operator R. L. Wethington was assigned to the first shift position at "IJ" Tower, Indianapolis. The Carrier improperly assigned Extra Operator Wethington to work the first shift position chief dispatcher's office at "MI" on October 27, 1963. Claim was made in behalf of M. R. Williams who was entitled to perform the work at "MI" Tower on October 27.

The only dispute that arose in connection with this claim is that the Carrier acknowledged that there had been a violation of the Agreement in not assigning Mr. Williams to perform the work on Sunday, October 27, but offered to pay only eight hours at the pro rata rate. The Employees believe that the Agreement entitles the claimant Williams to the payment of eight hours at time and one-half rate and refused to accept the settlement on the pro rata basis. Claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the parties to this dispute dated February 1, 1962, a copy of which is on file with your Board, and by this reference is made a part hereof.

In the Chief Dispatcher's office at Indianapolis, Indiana, Carrier maintains 7-day, 24-hour Car Distributor-Clerk service designated as "MI". M. R. Williams, claimant in this case, was assigned to the 11:00 P.M. - 7:00 A.M. trick with Saturday and Sunday as relief days.

On Sunday, October 27, 1963, the operator assigned to work the first trick relief was unable to report, and the extra operator standing for this vacancy, H. A. Ahaus, was not qualified to work this position. To provide protection, R. L. Wethington, who was working a first trick vacancy at "IJ", Indianapolis, Indiana, and was qualified to work at "MI", was diverted and Operator Ahaus worked the first trick at "IJ".

Claimant Williams, who was on his rest day, contended that, in the absence of an extra man, he should have been called for this vacancy, as the senior available man assigned at the point.

Upon appeal of the claim to the level of the undersigned, Carrier offered to settle the claim on the basis of pro rata rate, but this offer was rejected by the Organization.

OPINION OF BOARD: During handling of the claim on the property the Carrier admitted that Claimant was entitled to be used on his rest day to fill a temporary vacancy. The sole question presented to the Division is whether payment is to be made at the time and one-half rate as claimed or the straight time rate as offered by the Carrier.

While there are no awards pro and con on the issue, it is our view that Claimant, who was on his rest day, is entitled to the time and one-half rate of pay which is what he would have earned if he had worked. (Awards 13738-Dorsey and 15048-Mesigh). Accordingly, 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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.