

Award No. 16289
Docket No. TE-14968

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated the provisions of the parties' agreement when, commencing May 14, 1963 and each day thereafter Monday through Friday, including Monday, May 27, 1963, it required C. M. Smith, regular occupant of the agent's position Cookeville, Tennessee, to leave his assignment at Cookeville, travel to and perform extra (vacation relief) work on the agent-operator's position at Baxter, Tennessee, within the hours of his assignment at Cookeville, Tennessee.

2. Carrier shall, because of the violation set out in paragraph one here, compensate C. M. Smith a day's pay (8 hours) at the rate of the position occupied, in addition to the pay received at the location to which entitled, Cookeville, his regular assignment, plus travel time and expenses incurred by reason of Carrier's violative act.

3. Carrier shall, in addition to the foregoing, pay an available idle employe, extra in preference, a day's (8 hours) pay at the straight time rate of the agent-operator's position at Baxter, Tennessee for each of the ten (10) days during which said employe was deprived of filling the vacation vacancy.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier, and its Telegraphers, hereinafter referred to as Employees, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective May 1, 1924, and as amended. Copies of said agreements are available to your Board, and are, by this reference, made a part hereof.

The relevant facts in this case are simple and undisputed.

C. W. Tarpley, the regular occupant of the agent-operator's position at Baxter, Tennessee, pursuant to the provisions of the National Vacation

while the assigned Agent-Operator there was on vacation, i.e., a day's pay for each of such dates on behalf of Mr. C. M. Smith, the assigned Agent at Cookeville, Tennessee, at the Baxter rate, and similar pay on behalf of an available 'idle employe, extra in preference' on any such day or days that Mr. Smith was used to perform work at Baxter;

Please be referred to Article V of the August 21, 1954 agreement, Section 1(a) thereof providing:

'All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based.' (Emphasis ours.)

Inasmuch as neither of these claims was filed within the specified time limitation, and the latter mentioned one does not name the claimant or claimants, they are manifestly barred by said Article V. Furthermore, the joint filing with two recognized levels of handling is contrary to the said rule and the usual handling provision of the Railway Labor Act. These claims manifestly have no standing as such and the payments requested are, therefore, respectfully declined.

Without waiver of or prejudice to the position of the Railway Company that the said claims are barred, it is our conclusion that in having Agent Smith perform the mite of work at Baxter during the period mentioned, none of the rules mentioned by you, or, for that matter, any other agreed-upon rules, were violated. And during the handling of the claim filed by your letter of May 28, 1963, it was brought to your attention that Agent Smith was not required to go to Baxter on all of the dates included in that claim, and that the business at Baxter consisted of six prepaid inbound shipments covered by issuance of freight bills on three of the dates during the period referred to. Moreover, in the light of attendant circumstances, claims that three different employes, either named or unnamed, should be concurrently compensated for the Baxter assignment during the period referred to serves, in our opinion, to point up the lack of jurisdiction for any of them."

OPINION OF BOARD: Pursuant to instructions from the Carrier, Claimant, Agent at Cookeville, Tennessee, traveled approximately eight miles to Baxter, Tennessee, where he performed some of the duties of the Agent-Operator at Baxter, Tennessee, who was on vacation. Under this arrangement which was maintained during the vacation period of the Baxter Agent-Operator, Claimant departed Cookeville after beginning his assignment there, drove to Baxter, performed some of the duties of the Agent-Operator there, and then returned to Cookeville each afternoon in time to go off duty there at his regular time.

The present claim was filed alleging this arrangement violated the Agreement because it imposed extra work on the Claimant in the form of the work he performed at Baxter which work should have been performed by an extra employe under the terms of the Vacation provisions of said Agreement.

The claim was denied, appealed, and finally denied by the highest officer of the Carrier designated to handle such matters on December 3, 1963.

The burden is upon the complaining employees to show that the action taken violates some part of the Agreement. The employees have failed to meet this burden. No evidence of a prohibition in the Agreement against the Carrier having the Claimant who went on and off duty at the same location perform his assignment at both Cookeville and Baxter exists. Likewise, there is no evidence that the Carrier's failure to provide a vacation relief worker at Baxter and its having the Claimant go there to take care of some of the duties burdened either the Claimant or any other employee.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee 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 17th day of May 1968.