

Award No. 16290
Docket No. TE-15056

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1(a) Carrier violated the Agreement when it refused to compensate Telegrapher W. H. Powell, June 24, 1963, improperly held off of regular assignment 4:00 P.M. to 12:00 M.N. to protect Ticket-Agent-Telegrapher position at Plant City, Florida, 8:00 A.M. to 4:00 P.M., June 25, 1963, for vacation purposes.

(b) W. H. Powell shall be compensated equivalent to eight (8) hours at straight time rate of \$2.583 per hour. Total \$20.66.

2(a) Carrier further violated the Agreement by improperly paying W. H. Powell for service performed on his assigned rest days June 26 and 27, 1963.

(b) W. H. Powell shall be paid difference between straight time rate and the time and one-half rate of position worked, for June 26 and 27, 1963.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between the Atlantic Coast Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreements are, by reference, made a part of this submission as those set out herein, word for word.

At Plant City, Florida, Carrier maintains a Ticket Office. There are three eight hour shifts in the office. The first shift is designated as Ticket-Agent-Telegrapher and assigned hours 8:00 A.M. to 4:00 P.M. with work week of Monday through Sunday, one rest day of Saturday. It has a monthly rate of \$571.19. The regularly assigned occupant of this position is A. N. Livingston.

also presented for payment at rate of time and one-half when Mr. Powell was allegedly compelled to work the rest days of his regular swing assignment, while relieving on the Ticket Agent Telegrapher's position on June 26 and 27, 1963. The claim was declined by the Division Superintendent on July 12, 1963, after which it was appealed to Carrier's Personnel Department.

Before the claim was discussed in conference, statement was secured from Ticket Agent Livingston as to his exact conversation with Mr. Powell and Mr. Livingston's statement dated August 27, 1963, is attached as Carrier's Exhibit A.

Conference was held with the General Chairman on October 22, 1963, and letter dated October 23, 1963, to the General Chairman furnishing copy of Mr. Livingston's August 27 statement is attached as Carrier's Exhibit B. The claim was declined.

The General Chairman subsequently furnished Carrier copy of Mr. Powell's statement of November 16, 1963, attached as Carrier's Exhibit C.

Mr. Livingston was again asked to furnish statement concerning his conversation with Mr. Powell as to the latter desiring to work Mr. Livingston's vacation vacancy and copy of Mr. Livingston's statement of December 8, 1963, is attached as Carrier's Exhibit D.

The claim was again discussed in conference with the General Chairman on January 23, 1964, during which he was furnished copy of Mr. Livingston's statement of December 8, 1963 (Exhibit D). The claim was declined in Carrier's letter to the General Chairman under date of January 23, 1964, copy attached as Carrier's Exhibit E.

The current Telegraphers' Agreement, with amendments, is on file with your Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: W. H. Powell, claimant herein, was, on the dates involved, the regularly assigned incumbent of rest day relief position at Plant City, Florida. This position was assigned to relieve Third Shift on Friday and Saturday; First Shift on Sunday; Second Shift on Monday and Tuesday; assigned rest days on Wednesday and Thursday.

On June 23, 1963, claimant was instructed by Carrier's Chief Train Dispatcher to work Ticket Agent-Telegrapher (First Shift) position commencing at 8 A.M. Tuesday, June 25. On Monday, June 24, claimant was not permitted to work his regular assignment on Second Shift, 4 P.M. to 12 Midnight.

In Claim No. 1 Union contends that claimant was suspended from his regular assignment on June 24, 1963, and that under provisions of Article 3(f) and Article 9, he should be allowed 8 hours at pro rata rate, this being the amount he would have earned had he been permitted to fill his regular assignment. Carrier contends that Hours of Service Act provisions precluded use of the claimant on his regular Second Shift assignment June 24, in order that he could work on First Shift commencing at 8 A.M. on June 25. Its primary contention is that the Chief Dispatcher was entitled to rely on statements alleged to have been made by the regular incumbent of the First Shift position that claimant desired to relieve him during vacation; there-

fore, the Chief Dispatcher's written directive to claimant to work First Shift, in effect, works an estoppel against the Claimant.

Article 3 (f) provides:

"Employees will not be required to suspend work during regular hours or to absorb overtime."

Article 9 provides:

"Regularly assigned employees will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays. This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

Notwithstanding Carrier's argument to the contrary, there is no probative evidence to support its contention that claimant requested that he be permitted to work the First Shift during the vacation absence of the incumbent. Consequently, estoppel is not proved. The record stands that Carrier diverted claimant from his regular assignment and thereby caused the loss of a day's work. In Claim No. 1, he is entitled to pay for the day at pro rata rate. Awards 6781, 10445, 13363 and 14392.

Part 2 of the claim involves amount of compensation due claimant for services on June 26th and 27th. This Division has consistently ruled that provisions of Forty Hour Week Rules are applicable to regularly assigned Rest Day Relief positions. Awards 7828, 11076, 12521 and 13006. In view of our holding that claimant did not request the assignment on the First Shift, June 26th and 27th, under circumstances of this case, remained his assigned rest days. For services on these dates he was entitled to receive time and one-half rate under provisions of Article 5 instead of the pro rata rate allowed.

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 by the Carrier.

AWARD

Claim sustained.

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.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.