

Award No. 16295

Docket No. TE-15068

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

C. A. Pyles, regularly assigned 3rd trick Block Operator at Bay, shall be paid eight (8) hours at the punitive rate for being available and not used for service on his rest day, August 4, 1962, when another employe was used at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Mr. C. A. Pyles, was the regularly assigned third shift Block Operator (10:30 P. M.-6:30 A. M.) at Bay Block Station, located on Carrier's Philadelphia - Washington main line, three and one-half miles north of its Baltimore station. Claimant's work week included work days of Sunday through Thursday with rest days of Friday and Saturday. The position is manned seven days per week, five days by the Claimant and the two rest days by a regularly assigned relief employe.

Claimant was assigned and granted a vacation of five work days beginning Sunday, July 29, and extending through August 2, 1962. Regulation 5-C-1(a) provides:

"5-C-1. (a) When a temporary vacancy of less than thirty (30) days in a Group 2 position not designated by an asterisk (*), occurs in an office where two (2) or more shifts are worked, such vacancy may be filled by the senior qualified Group 2 employe who makes application and is regularly assigned to such office, if permission is granted by a proper officer of the Company.

Other Group 2 employes regularly assigned to such may then advance in the order of their seniority to Group 2 positions made temporarily vacant by such change, and the last Group 2 position so vacated shall be filled by an extra man. For the purpose of applying this paragraph (a) regular Group 2 relief employes whose schedules include relief work in an office shall be considered as employes regularly assigned to such office."

Pursuant to the above rule, Mr. W. M. Arnold, third shift leverman at Bay Block Station moved onto Pyles' vacancy during the period of Pyles'

OPINION OF BOARD: The only question presented by this dispute is whether the Claimant should be paid at the time and one-half rate for one of his rest days when work was required and was performed by an employe whose right to the work was inferior to that of the Claimant.

Regulation 4-T-1 (f) of the Agreement between the parties provides as follows:

"Any adjustment growing out of claims covered by this regulation (4-T-1) shall not exceed in amount the difference between the amount actually earned by the Claimant and the amount he would have earned from the Company if he had been properly dealt with under this Agreement."

Had the Claimant been properly dealt with under the Agreement he would have performed service on his rest day and would have received time and one-half rate for such service. Under the provisions of the above regulation he is entitled to be made whole.

The claim will be sustained accordingly.

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 violated.

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.