

Award No. 16456
Docket No. TE-15322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, 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 the Carrier violated Regulation 5-G-1 and the Memorandum of Understanding of January 30, 1961, Section B, on February 23, March 2 and 9, in filling the vacancy at Jersey Tower, 11 P.M. to 7 A.M. G. Paden, regularly assigned incumbent of Relief 5 was diverted from his position at Center to fill the vacancies at Jersey, and the third trick at Center filled on the overtime basis.

E. Jacoby, regularly assigned at Cooper, 7 A.M. to 3 P.M., rest days Saturday and Sunday, was qualified and available to fill these vacancies but not called or used. Jacoby's time slips for these dates were denied by the Assistant Superintendent Transportation on April 29, 1963, on the basis that Paden was properly assigned in accordance with Rule 2-U-1. This rule does not apply, and Jacoby's claims should now be allowed as presented.

EMPLOYEES' STATEMENT OF FACTS: Claimant held a regular Group 2 position as first-shift block operator at Cooper Tower, an interlocking and block station in continuous service, located 1.5 miles from Camden, New Jersey. His hours of assignment were from 7:00 A.M. until 3:00 P.M., daily except Saturday and Sunday.

G. Paden held a regular Group 2 relief assignment which required him to work third shift, five days per week, on the following schedule:

Wednesday - Jersey Tower

Thursday - Cooper Tower

Friday - Alan Tower

Saturday - Center Tower

Sunday - Center Tower

Monday and Tuesday - Rest Days

On account of no available extra block operators, Block Operator Paden was used at Jersey, instead of 'Center' on the dates listed in the subject, and the third trick position at 'Center' was filled by using the regular incumbent at the overtime rate."

CARRIER'S STATEMENT OF FACTS: The dispute in this case arose at Jersey Tower at Camden, New Jersey on the Atlantic District of the Carrier's Philadelphia Division (formerly the Philadelphia Region) of its Eastern Region. The third trick Block Operator position at that location became vacant because the regular employee resigned.

On Saturdays, February 23, March 2 and 9, 1963, during the period the third trick vacancy at Jersey was being bulletined and awarded, regular Relief Block Operator G. Paden was used to fill the vacancy. Mr. Paden's relief assignment protected rest days at Jersey on Wednesdays, Cooper on Thursdays, Alan on Fridays, and Center on Saturdays and Sundays, all on third trick. For his service on these three days, he was allowed the pro rata rate; however, his position was protected on those days by the regular trick Block Operator at the overtime rate.

The Claimant, E. Jacoby, was regularly assigned as a Block Operator on the first trick at Cooper Tower daily except Saturday and Sunday. He presented penalty time cards for the above three dates, requesting payment of 8 hours at the pro rata rate because he was not used at Jersey Tower in preference to G. Paden.

The time cards were denied within the required time limit and thereafter the claim, identical to the one listed with your Board, was properly progressed in accordance with the Rules Agreement as far as the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes. Incident to this handling, a Joint Submission was prepared, a copy of which is attached as Exhibit A.

The claim was discussed by the Manager and the General Chairman at a meeting on December 5, 1963. The Manager denied the claim in his letter of December 26, 1963, a copy of which is attached as Exhibit B. Under date of January 29, 1964, the General Chairman asked the Manager to give further consideration to the claim. The Manager gave the matter further consideration and again denied the claim on February 27, 1964. Again on March 11, 1964, the General Chairman wrote to the Manager, and the Manager in his letter of May 20, 1964, again denied the claim. Copies of these four letters are attached as Exhibits C, D, E and F, respectively.

Therefore, so far as the Carrier is able to anticipate the basis of the claim, the questions to be decided by your Honorable Board are whether, under Regulation 5-G-1 or the Memorandum of Understanding of January 30, 1961, the Claimant was entitled to be used to fill the vacancy at Jersey Tower on February 23, March 2 and 9, 1963, in preference to G. Paden and, accordingly, whether he is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 23, March 2 and 9, 1963, G. Paden was diverted from his regular assignment to fill third shift position at Jersey Tower. Mr. Paden held regularly assigned relief position which included the following work assignments:

Wednesday - Jersey Tower

Thursday - Cooper Tower

Friday - Alan Tower

Saturday - Center Tower

Sunday - Center Tower

Assigned rest days:

Monday

Tuesday

The above dates all occurred on Saturday. Mr. Paden was regularly assigned to work at Center Tower on each date involved.

There is no evidence in the record to show any justification or necessity for diverting Mr. Paden from his regular assignment at Center Tower to the third shift position at Jersey Tower. The Organization relies on the provisions of Regulation 5-G-1 and Memorandum of Understanding dated January 30, 1961. The Carrier contends that Regulation 5-G-1 has no relevance, and that under the provisions of the Memorandum of Understanding it had the right to divert Mr. Paden.

We find that the only relevance of Regulation 5-G-1 is that it provides for regular relief assignments which are to be treated as any other position. In the absence of evidence to the contrary, the Memorandum of Understanding clearly and unambiguously, under the circumstances of this case, applies only when it is necessary to fill a position on an overtime basis. It is undisputed that Mr. Paden was utilized on a pro rata basis.

The facts show that the vacancy at Jersey Tower arose when the regularly assigned incumbent of the third shift position submitted his resignation from the service of the Carrier, effective February 18, 1963. Each of the dates involved in this dispute occurred on a regular assigned work day of this position. The vacancy, therefore, was no different than any other vacancy due to the absence of a regularly assigned employee.

We find, therefore, that Carrier erred in the diversion of Mr. Paden in the absence of showing any necessity therefor. The fact that Mr. Paden's regular assignment at Center Tower was filled by the regular incumbent of that position, working at the overtime rate, is irrelevant of the application of the Memorandum of Understanding.

Claimant in the instant case holds a regular assignment at Cooper Block Station, 7:00 A.M. to 3:00 P.M., with assigned rest days of Saturday and Sunday. On each of dates involved he was observing a rest day, and was available for service. It is not questioned that he was qualified to perform service on third shift position at Jersey Tower. His claim originated with the filing of Time Slips which were received by the Assistant Superintendent of Transportation on March 14, 1963. The record is devoid of any evidence to show that Claimant made application to work the vacancy at Jersey Tower on any of the dates involved. There is no evidence to show that the Carrier was aware at the time that the vacancy occurred that he desired to fill the

vacancy on the dates involved. Consequently, his right to demand the work would be no different than any other employe at another station who was qualified and observing a rest day. His claim for compensation must, therefore, be denied. We do not rule on what his rights would have been had he made such a request. This question could be resolved only in a properly handled dispute going to this point.

It therefore follows that the substantive claim set forth in paragraph one of the Statement of Claim should be, and is, hereby sustained. The compensatory claim set forth in paragraph two of Statement of Claim be, and is hereby, denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent set forth in the Opinion.

AWARD

Claim sustained in part and denied in part, per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.