



Award No. 17158

Docket No. TE-16251

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The Pennsylvania Railroad, that:

1. Carrier violated the existing agreement when, on March 17, 1964, it permitted the regular assigned Relief Operator at Hudson Tower, to suspend duties on her regular assignment, which was first trick, 7:00 A.M.—3:00 P.M., and assume the duties on second trick 3:00 P.M.—11:00 P.M.
2. Carrier shall compensate B. F. Scheck, regular assigned Block Operator on first trick, at Hudson Tower, who was observing his regular relief day, eight (8) hours at the pro rata rate. Block Operator B. F. Scheck was ready, willing and available to cover this vacancy. Regulation 5-G-1(b) and 5-D-1(a) in support of this claim

EMPLOYEES' STATEMENT OF FACTS: Claimant was the regularly assigned first-shift Block Operator at Hudson Tower, Hudson, Ohio, which is on one of Carrier's main lines about 23 miles southeasterly from Cleveland. His assigned hours were 7:00 A.M. until 3:00 P.M., daily except Tuesdays and Wednesdays.

E. M. Hunsberger was the regularly assigned relief Block Operator at Hudson Tower with the following schedule:

Tuesdays and Wednesdays	— 7:00 A.M. until 3:00 P.M.
Thursdays and Fridays	— 3:00 P.M. until 11:00 P.M.
Saturdays	— 11:00 P.M. until 7:00 A.M.
Sundays and Mondays	— rest days

H. E. McGiffin was the regularly assigned second-shift Block Operator at Hudson Tower with assigned hours of 3:00 P.M. until 11:00 P.M. daily except Thursdays and Fridays. He was also an extra train dispatcher.

J. Bixler was an extra Block Operator working in accordance with Regulation 5-E-1 of the effective Agreement between the parties.

All four of these employees, as Block Operators, were Group 2 employees working Block Operator positions.

second trick vacancy at Hudson and whether Claimant is entitled to the compensation claimed.

(Exhibits not reproduced)

OPINION OF BOARD: Mrs. E. M. Hunsberger was the regularly assigned relief Block Operator at Hudson Tower. Her assignment called for her to work on Tuesdays from 7:00 A.M. to 3:00 P.M. Prior to such trick on Tuesday, March 17, 1964 she advised the Supervising Operator that she would not be able to protect her assignment on such date but that she would be available for a second trick assignment on such date if she were needed.

Her regular first trick assignment was filled by Extra Block Operator J. Bixler. A vacancy did arise on the second trick—in a Train Dispatcher position. This was filled by Block Operator H. E. McGiffin, who was due to serve on such date as the regularly assigned second trick Operator at Hudson Tower. When he moved over to the Train Dispatcher position, Mrs. Hunsberger was moved in to fill his second trick Operator position.

Claimant B. F. Scheck was the regularly assigned Block Operator on first trick—Mrs. Hunsberger was his regular relief on Tuesday in that position. The Organization claims that the work properly belonged to Scheck because: (1) "Hunsberger was not available for duty. There is no option to be unavailable just for a certain tour of duty." (2) "... with Hunsberger off duty, and no extra employees available with less than forty hours work in the week, the Claimant was available and should have been used to fill the second trick vacancy at Hudson. Item B (1) of the January 30, 1961 Memorandum of Understanding applies."

The keystone of both of the foregoing contentions is that Mrs. Hunsberger was "not available." Indeed, this claim pivots on a determination of whether or not Mrs. Hunsberger was "available" as that term is contemplated in the various agreements between the parties, for if she was available she had a right superior to Claimant Scheck to demand the work.

We have here a situation where a member (Mrs. Hunsberger) of the complaining organization asks an accommodation of Carrier, ie. that she be relieved of her normal assignment on March 17, 1964. Carrier obliges. At the same time Employee signifies her willingness to fill a subsequent assignment during the next ensuing shift. This does two things—two things that are salutary unless they result in a violation of the Agreement—(1) Mrs. Hunsberger enjoys some income on a day she would otherwise have none and (2) Carrier avoids penalty pay in filling a temporary vacancy.

Three principles emerge:

(1) The integrity of the Agreement between the parties is of paramount importance. This is so, not simply as a matter of abstract principle, but for the reason that it is through encouragement of genuine respect for the Agreement that harmonious labor-management relations can best be maintained. Our system of collective bargaining recognizes the equal dignity of employer and employee; it likewise imposes equal responsibility on the parties. That responsibility is delineated in the Agreement—the Constitution which

should govern the working relationship of the people involved. The Agreement, however, has no intrinsic importance—it is important only to the extent that it serves such people.

(2) For we deal neither with ciphers nor with cold names on a union roster. When institutions, or agreements, fail to recognize the humanistic aspects of economic relationships, such institutions or agreements have little to justify their existence. In the instant case the Employees' Submission makes dark reference to collusive activity between its member (Mrs. Hunsberger) and management, likening the challenged arrangement to that sort of private treaty in derogation of collectively bargained agreements which was condemned in *ORT vs. Railway Express Agency*, 321 US 342. The comparison is unjustified. There is absolutely no probatory showing of the slightest bad faith on the part of Carrier or on the part of Mrs. Hunsberger. The arrangement here was a common sense one which accomodated both sides. Again, such is to be encouraged unless it violates the letter or spirit of the effective agreement.

(3) The third principle concerns overtime, and therein lies the essential gravamen of this complaint. In place of the common sense arrangement which was employed, we are asked to instruct Carrier that the following should have obtained: that Mrs. Hunsberger twiddle her thumbs instead of pursuing her occupation, that Mr. Scheck be called from his rest day and that Carrier pay a 50% penalty for its accomodation of a lady whom the Organization exists to serve.

We have said on many occasions that Carrier has the duty to avoid overtime pay when such can be done without a violation of the agreement. We think it appropriate to say that a like duty devolves on the Organization. The exact opposite philosophy is exemplified in petitioners' argument herein that the Memorandum of Understanding of January 30, 1961 applies. Such instrument is applicable when "work is assigned on an overtime basis." This argument neatly presumes a situation where overtime pay is applicable, yet there is an utter lack of evidence of any rule violation. This claim is wholly without merit; there is no showing that the Agreement was violated.

Finally, we hold specifically that Mrs. Hunsberger was available as that term is contemplated in the Agreement. An employe is available, we apprehend, on any occasion when he is not designated to the contrary by a specific provision of the Agreement.

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 not violated.

Claim denied.

A W A R D

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.