Award Number 17432
Docket Number TE-16787

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The New York, New Haven and Hartford Railroad, that:

> Carrier violated the Agreement between the parties when commencing with the week ending February 5, 1966, it deducted $43.71 from the earnings of Donald Medeiros, representing alleged over payment of deadheading and mileage between his assigned work location and Woodlawn for the week beginning December 12, 1965, in amount of $8.52. Also the amount of $35.19, representing alleged overpayment of deadheading and mileage between his assigned work location and Danielson for the week beginning December 27, 1965. Accordingly, Carrier shall be required to refund these amounts, totaling $43.71 to Donald Medeiros.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective October 31, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

At the time this issue arose, the claimant's status was that of an extra employee, assigned to a temporary vacancy at Whipple. In the terminology peculiar to this carrier, Whipple was his "hold down." Commencing with the week December 12, 1965, Carrier required him to work a relief assignment at Woodlawn for five (5) days. He claimed and was paid deadheading and mileage in both directions for each of the five days. He was returned to his hold down at Whipple on December 19, 1965. Beginning December 27, 1965 he was required to work the agency at Danielson, Connecticut, for five (5) days; again he claimed and was paid for deadheading and mileage in both directions for each of the five days he worked at Danielson.

On February 5, 1966, the Terminal Superintendent at Providence, Rhode Island, wrote him concerning certain alleged overpayments totaling $87.75, notifying him that this amount would be recovered in three weekly deductions of $29.25 commencing with the week ending February 5, 1966. At issue

The claim was denied on the property on the basis that Article 29 is applicable to "regularly assigned employes"—not extra employes. Mr. Medeiros was allowed initial and final deadheading in full accord with the provisions of Article 16 of the Agreement.

Copy of the Agreement dated September 1, 1949, as amended, between the parties is on file with this Board and is, by reference, made a part of this Submission.

(Exhibits not reproduced)

OPINION OF BOARD: At the time the claim herein arose, the Claimant's status was that of an extra employe assigned to a temporary vacancy on third trick at Whipple, R. I., referred to by the Carrier as a "holddown."

Beginning December 12, 1965, Claimant was used on Relief Job No. 21 at Woodlawn, and was paid daily deadheading on each of the five days that he covered that assignment. He returned to the temporary vacancy on third trick at Whipple on December 19, 1965. Beginning December 27, 1965, he was used in place of the agent at Danielson, Connecticut, for five days, and was paid daily deadheading on each of the days that he covered that assignment. On February 5, 1966, Claimant was notified by the Carrier's Terminal Superintendent that he had been overpaid a total of $43.71 for deadheading and mileage, as well as other overpayments which are not in dispute here, which amounts would be recovered in future weekly deductions.

As indicated, we are concerned only with the payments for deadheading and mileage, the Carrier contending that as an extra employe, the Claimant was only entitled to deadheading and mileage for the initial trips going to the assignments at Woodlawn and Danielson, and for the final trip returning from those assignments. The Petitioner contends that while Claimant was assigned to the temporary vacancy at Whipple he assumed all the conditions of that position and was entitled to all the benefits that the regularly assigned incumbent would have been entitled to.

Article 16(b) of the applicable Agreement reads:

"ARTICLE 16—DEADHEADING

* * * * *

"(b) Extra employes deadheading under orders for working service shall be paid for time traveling and waiting enroute, to and from the point where service is to be performed at the straight time rate of the position to be relieved. 'Enroute' does not include time at the point at which worked following arrival or prior to departure. Where a position is held by an extra employe for more than one day the initial and finding deadheading only will be paid for.

* * * * *"

Article 29 of the Agreement reads:

"ARTICLE 29—RELIEF SERVICE BY REGULAR EMPLOYES

"Regularly assigned employes will not be required to work at other than their regular positions, except in cases of emergency.

When required to work temporarily at other than their regular positions, employes shall be paid at the higher rate of the two positions and in addition shall be allowed any actual necessary expenses incurred and straight time rate for time consumed in traveling and waiting enroute to and from such temporary assignment. In no event will the employe receive less pay than he would have received had he not been used in such emergency service."

There seems to be no dispute that during the entire period involved in the claim the Claimant had the status of an extra employe. Therefore, under the clear wording of Article 16(b) he was entitled to deadheading for the initial trips going to the assignments at Woodlawn and Danielson and returning from those assignments. Article 29, by its clear wording is applicable only to regularly assigned employes required to work temporarily at other than their positions in cases of emergency. It is well settled that this Board has no power to alter or amend the Agreement or to deal in equity. We have no alternative but to deny the claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.

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