



Award Number 17484

Docket Number TE-14983

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad, (Erie District), that:

1. Carrier violated Rules 10 and 24 of the Agreement when, on the following dates it diverted the following employees to work at 'UK' Office, Salamanca, New York:

April 14, 1962—Diverted F. J. Pascarella from first shift at 'X' Tower, Olean, to work first shift.

May 26, 1962—Diverted F. J. Pascarella from first shift at 'X' Tower, Olean, New York, to work first shift 'UK'.

May 26, 1962—Diverted R. J. Gray from third shift 'X' Tower, Olean, to work third shift 'UK' Office.

2. Carrier shall, because of violations set forth in (1) of Statement of Claim, compensate the following employees as follows:

April 14, 1962—Compensate G. A. Paivanas or R. S. Dotson for a day's pay at time and one-half.

May 26, 1962—Compensate G. A. Paivanas for a day's pay at time and one-half.

May 26, 1962—Compensate R. S. Dotson for a day's pay at time and one-half.

EMPLOYEES' STATEMENT OF FACTS: Re the claim for dates of April 14 and May 26 (where first shown) 1962:

Mr. G. A. Paivanas occupies a 7-day position at "UK" Office, Salamanca, New York, with daily assigned work hours of 8:00 A.M. to 4:00 P.M. (first shift). His work week is Monday through Friday, with Saturday and Sunday rest days covered by a regular relief position held by Mr. W. P. Schreckengost.

Mr. Schreckengost was not available to cover his assignment in relieving Mr. Paivanas on his rest days, April 14 and May 26, 1962. No qualified

erator at "X" Tower, Olean, moved up to work in place of Pascarella relieving first trick at Olean and extra employe C. Livak was used in place of Gray on third trick at Olean.

On June 8, 1962, claim was instituted by General Chairman R. E. Matthews with Chief Dispatcher W. J. Freaney alleging that claimants were entitled to a day at time and one half under Rules 10 and 24 of the applicable agreement account not used on dates of claim. Claim was denied by Chief Dispatcher Freaney on July 6, 1962 and thereafter handled in the usual and prescribed manner up to and including Carrier's highest officer designated to handle such matters, where it was discussed in conference on September 25, 1963 and Carrier's denial decision confirmed as follows on October 16, 1963:

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This has reference to your file 12-L-22, concerning claim filed on behalf of C. A. Paivanas or R. S. Dotson, April 14, 1962, G. A. Paivanas and R. S. Dotson May 26, 1962, account alleged diversion of employes, which case was discussed in conference September 25, 1963.

This will confirm that during conference you were fully informed of the fact that Division Chairman F. J. Pascarella was contacted concerning this entire matter, and it was with his concurrence and that of the employees that the positions were worked as here complained about. There is no prohibition contained in the applicable agreement that it was not proper for Division Chairman Pascarella to make such an understanding and it is Carrier's position that the Organization is estopped from now holding to the contrary. See First Division Award 11217. It is a known fact that situations such as this have historically been handled on this and other divisions in a similar manner without complaint. Moreover, your attention was directed to the fact that G. A. Paivanas did not want to work at Salamanca on either date of claim and with C. Livak being an extra employe, who could have been used at Salamanca, neither claimant would have in any event been used on the date of claim.

Allegation of the Organization that this arrangement was made to avoid payment of time and one half to the claimants is not consistent with the record and for the reasons stated, claim is without merit and denial thereof during conference is herewith confirmed. Claim denied.

Yours very truly,

/s/ F. DIEGTEL

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Exchange of other correspondence between the parties is attached hereto as Carrier's Exhibits "A" through "J".

(Exhibits Not Reproduced)

OPINION OF BOARD: Employee Paivanas occupied a seven day position under the Telegraphers' Agreement at Salamanca, New York, and

employee Shreckengast covered the rest days on regular relief position, but was not available to cover on rest days April 14 and May 26, 1962. There was no qualified extra employee available and Carrier did not call the regular incumbent, Paivanas, who was on vacation, to work the two days, but called employee Pascarella, regularly assigned to Olean, New York, to cover both days.

It is urged that the calling of Pascarella rather than Paivanas was a violation of the Agreement and this Board agrees. But who is Pascarella and why was he contacted? The record is that Pascarella is the District Chairman of the Organization and the Organization's representative in dealing with Carrier's local supervision in the application of the rules of the Agreement.

It is urged that individuals cannot contract with the Carrier contrary to the provisions of an Agreement which was bargained collectively and thereby make the Agreement nugatory. This Board agrees. It is well settled that such an oral agreement cannot set aside such a written contract, but was an "individual" here making such an oral agreement?

This same issue was settled in Award 11736, which said:

"If he, as an Organization officer had no authority to act, should it not be presumed he would have passed the matter on. . . . An Organization, in our opinion, must assume responsibility for the acts of its elected officers just as Management does for its appointed agents. The Carrier, in turn, is justified in relying on the bona fides of a duly delegated officer. . . ."

The Organization urges that there was no proof that Pascarella was acting as District Chairman, but since he is in fact District Chairman none is necessary. To argue that Carrier's reliance was not in good faith there must be a showing that Pascarella intended his acts as those of an individual and there is no such proof in the record.

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 has been violated, but the Organization is estopped to assert the violation.

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 26th day of September 1969.