



Award Number 17555

Docket Number TE-15703

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

(Formerly The Order of Railroad Telegraphers)

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Southern Railway, that:

CLAIM NO. 1

Carrier violated the terms of Telegraphers' Agreement when on the dates and locations listed herein it caused, required or permitted improper relief for the employees listed:

- (a) W. L. Thames, agent-telegrapher, Gulf, North Carolina, October 7, 8, 9, 10, 11, 1963, a total of five days.
- (b) H. C. Metz, agent-telegrapher, Bowersville, North Carolina, October 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, 1963, a total of ten days.
- (c) Miss S. L. Hair, agent-telegrapher, Clemmons, North Carolina, October 21, 22, 23, 24, 25, 28, 29, 30, 31, 1963, November 1, 1963, a total of ten days.
- (d) Mrs. E. L. Thames, agent-telegrapher, Goldston, North Carolina, October 7, 8, 9, 10, and 11, 1963, a total of five days.
- (e) J. B. Coleman, Jr., agent-telegrapher, Franklinville, North Carolina, October 14, 15, 16, 17, 18, 21, 1963, a total of six days.
- (f) H. K. Alley, agent-telegrapher, Pleasant Garden, North Carolina, October 28, 29, 30, 31, November 1, 1963, a total of five days.
- (g) F. E. Bass, agent-telegrapher, Huntersville, North Carolina, October 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, November 1, 1963, a total of thirteen days.

Carrier shall now compensate claimants as named for each date above named at the rate of time and one-half rate of their respective positions to which regularly assigned. Such compensation to be in addition to any pay that may have been allowed claimants for the dates listed.

- (a) W. L. Thames, Gulf, North Carolina, five days, total \$146.80.
- (b) H. C. Metz, Bowersville, North Carolina, ten days, total \$312.00.
- (c) Miss S. L. Hair, Clemmons, North Carolina, ten days, total \$296.00.
- (d) Mrs. E. L. Thames, Goldston, North Carolina, five days, total \$142.00.
- (e) J. B. Coleman, Jr., Franklinville, N.C., six days, total \$173.28.
- (f) H. K. Alley, Pleasant Garden, N.C., five days, total \$143.60.
- (g) F. E. Bass, Huntersville, N.C., thirteen days, total \$386.88.

Total amount herein claimed \$1,600.56.

CLAIM NO. 2

Carrier violated the terms of the Telegraphers' Agreement when on November 4, 5, 6, 7 and 8, 1963, it caused, required or permitted improper relief to H. B. Lewis, station agent, Troutman, North Carolina, and utilized Mr. Lewis to relieve H. L. Jones, agent-telegrapher at Davidson, North Carolina for vacation on the same dates as above listed and without compensating Mr. Lewis in accordance with the Agreement for his work performed away from his regular assignment.

Carrier shall now compensate H. L. Jones, agent-telegrapher, Davidson, North Carolina, at the rate of time and one-half rate of pay in addition to the straight time rate of pay allowed for November 4, 5, 6, 7 and 8, 1963 and compensate H. B. Lewis, station agent, Troutman, North Carolina, \$5.00 per day for the same dates for his work at Davidson, North Carolina. Total claim for Mr. Jones is \$151.60 and total for Mr. Lewis \$25.00.

EMPLOYEES' STATEMENT OF FACTS: The two claims involved in this dispute have a common principle in that the Carrier used employees from one seniority district and required or permitted them to work on other seniority districts on which they had no seniority.

In Claim No. 1, the following named employees are employed on the Danville Division of the Southern Railway Company and hold agent-telegrapher seniority on the Danville Division as follows:

- S. N. Jordan, July 13, 1962
- W. K. Walton, Jr., July 3, 1963
- R. D. Sheldon, July 3, 1963
- S. V. Standard, July 16, 1963

These employees were used to perform relief on various positions on the Winston-Salem Division on various dates shown in the claim.

Claims were made in behalf of W. L. Thames, H. C. Metz, Miss S. L. Hair, Mrs. E. L. Thames, J. B. Coleman, H. K. Alley, and F. E. Bass who were employees who held agent-telegrapher seniority on the Winston-Salem Division and were entitled to assignment to positions on the Winston-Salem Division in preference to the aforementioned employees on the Danville Division.

"Section 4. Effective January 1, 1955, Article 5 of the Vacation Agreement of December 17, 1941 is hereby amended by adding the following:

Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

Note: This provision does not supersede provisions of the individual collective agreements that require payment of double time under specified conditions."

(Exhibits Not Reproduced)

OPINION OF BOARD: This case involves two claims in which it is alleged that regularly assigned employees in one seniority district were improperly relieved, during temporary absences, by extra employees from an adjoining seniority district.

In Claim No. 1 five regularly assigned agent-telegraphers were so relieved for vacations of five and ten days each. One such agent-telegrapher was so relieved for a total of six days while he was performing service as an extra train dispatcher. Another such agent-telegrapher was so relieved for thirteen days because of illness. Claim was filed on behalf of these absent employees for a day's pay each day they were absent.

In Claim No. 2 a regularly assigned agent-telegrapher was afforded a five-day vacation by diverting another regular employee in the same seniority district who, in turn, was relieved by an extra employee from the adjoining district. The diverted employee was compensated as provided by Rule 15. Claim was filed on behalf of the vacationing employee for five days' pay.

A careful analysis of the record reveals that the Employees have failed to establish any basis for the claims in behalf of the named Claimants.

It is well settled by a host of our awards that the burden of proving all elements of a claim rests with the petitioner. These claims, therefore, must be denied for failure of proof.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.