



Award Number 17802

Docket Number TE-18148

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David L. Kabaker, Referee

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
PENN CENTRAL COMPANY, NEW HAVEN REGION**

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

1. Carrier violated the Agreement between the parties when on Sunday, September 10, 1967, the senior extra S. S. Operator, Peter N. Varrica was withheld from service as third trick operator at Mansfield, Massachusetts and the junior extra operator, Gerard F. Giguere was used to fill the vacancy.
2. Carrier shall compensate S. S. Operator P. N. Varrica for eight (8) hours at pro rata rate of position of S. S. Operator at Mansfield, Massachusetts.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) STATEMENT OF THE CASE**

An Agreement between the New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed in accordance with the time limits provided by the Agreement, up to and including conference with 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.

This claim arose out of Carrier's failure to call the senior extra telegrapher to work one day at Mansfield, Massachusetts on Sunday, September 10, 1967. Carrier called a junior employee to fill the job.

**(b) ISSUES**

Assignment of extra employees in accordance with their seniority.

"B"—Carrier's decision.

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

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Claimant seeks eight (8) hours' pay at pro rata rate, asserting that Carrier violated his seniority rights when it withheld him from service as third trick operator at Mansfield, Mass. on Sunday, September 10, 1967 and assigned junior extra operator to fill the vacancy.

Carrier contends that Claimant, a spare operator on the Providence District, was withheld to fill a vacancy at Promenade West, Providence, R. I. on Monday, September 11, 1967. Carrier further contends that Claimant, who was qualified to fill both assignments, was assigned to Promenade West because there was no qualified spare man available to cover Promenade West on Monday, September 11, 1967. Carrier further represents that Claimant was used in line with his qualifications and the requirement of the service.

This dispute can be distinguished from Docket TE-17555, Award 17801, heard jointly with this case, in that both the senior and junior employees in 17555 were qualified to perform both positions involved in that matter.

An examination of the record confirms the opinion of this Board that Carrier had the right to assign the Claimant, a spare employee, to meet the requirements of the service and that the Agreement does not prohibit the assignment. We are in accord with the finding in Case 8 of Special Board of Adjustment No. 306 wherein it is stated that the Carrier has the right to assign spare men to meet the necessities of the service. It must also be additionally noted that the record reveals that Claimant suffered no loss.

**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**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1970.

**DISSENT TO AWARD 17802, DOCKET TE-18148**

This Award erroneously evaluates the seniority rights so clearly demonstrated in its companion case, Award 17801. A distinction is said to exist because here the claimant was qualified for both jobs and his junior was not. That appears to be strange grounds for negating the right of a senior qualified employee. It places a premium on failure of an extra employee to qualify for available work, and puts at a disadvantage an extra employee who does qualify himself for work.

The award does not give effect to the obvious intent of the seniority rules, therefore, I must dissent.

**C. E. KIEF**  
Labor Member