



Award Number 17936

Docket Number TE-17188

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John J. McGovern, Referee

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
SOUTHERN PACIFIC—TEXAS AND LOUISIANA LINES**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Railway Company (T & L Lines), that:

1. Carrier violated the Agreement between the parties when it improperly relieved Agent P. M. Betts, McAllen, Texas, on May 28, 1966 and June 4 and 25, 1966.
2. Carrier shall compensate Agent Betts for eight (8) hours each date at the time and one-half rate.

**EMPLOYES' STATEMENT OF FACTS:** Copy of the Agreement between the parties effective December 1, 1946, as supplemented and amended, is available to the Board and by this reference is made a part hereof.

Claimant was the owner and occupant of position of Agent, McAllen, Texas. His assigned hours were 8:00 A.M. to 5:00 P.M. daily except Saturdays and Sundays. The only other position under the Agreement at that station was that of Telegrapher-Clerk, which worked 8:00 P.M. to 5:00 A.M. daily except Sundays and Mondays.

Each of the claim dates was a Saturday.

Rest days of the two positions at McAllen, Texas, were assigned to a regular relief position which worked as follows:

Saturday—8:00 A.M. to 5:00 P.M., Agent, McAllen, Texas

Sunday & Monday—8:00 P.M. to 5:00 A.M., Telegrapher-Clerk, McAllen, Texas.

Tuesday and Wednesday—10:00 P.M. to 7:00 A.M., Telegrapher-Clerk, Edinburg Yard, Texas.

Thursday & Friday—Rest days.

The regular relief position was owned by one P. B. Guttenberger.

The position of Agent, McAllen, Texas was not scheduled to work on Sundays. Thus it was a six-day position.

The position of Agent, Elsa, Texas was owned and occupied by a Mr. Barker. Mr. Barker was an extra dispatcher who from time to time was required by the Carrier to perform extra work in the dispatchers' office in Houston, Texas.

On each date, May 28, June 4 and June 25, 1966. P. M. Betts made claim for payment of eight hours at time and one-half rate of the agent, McAllen, because he said he was "improperly relieved by agent, Elsa, Texas". (quotation is language of claimant.) These claims were declined. Appeal was made to the Superintendent by the District Chairman and it was rejected. It was then appealed by the General Chairman to Carrier's Manager of Personnel, highest officer on the property designated to handle such matters. This appeal was disallowed by letter dated November 29, 1966. Conference was held December 12, 1966, and the decision of declination was affirmed. CARRIER'S EXHIBIT NO. 1 reproduces the correspondence.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** The Claimant in this case was regularly assigned by bulletin as Agent at Mc Allen, Texas with duty hours 8:00 A.M. to 5:00 P.M., Monday through Saturday, rest days being Saturday and Sunday. Mr. P. B. Guttenberger was regularly assigned by bulletin to position of relief telegrapher, which regular relief assignment included service at two stations. Saturday, he worked as agent at Mc Allen, Texas; Sunday and Monday, he worked as Telegrapher-Clerk at Mc Allen. Thursday and Friday, he worked as Telegrapher-Clerk at Edinburg, Texas. Saturdays, the dates in the claim, were days on which the position of Agent at Mc Allen was a part of the regular assignment of Mr. Guttenberg.

Because of a shift of other personnel, Mr. Guttenberg was held off duty on his regular assignment as Telegrapher-Clerk, Wednesday, May 25, 1966 in order that he could be utilized as Agent-Telegrapher at Elsa, May 26, 1966 without violation of the Hours of Service Act. He filled the Elsa assignment on Thursday and Friday of that week. Saturday, May 28, 1966, he worked his regular assignment as Agent at Mc Allen, and on Sunday, May 29, 1966, he worked his regular assignment as Telegrapher-Clerk at Mc Allen. Mr. Guttenberg then worked the assignment as Agent-Telegrapher at Elsa on Tuesday, May 31, Wednesday, June 1, Thursday, June 2, and Friday, June 3, 1966. He was released and resumed his regular relief position, working Saturday, June 4, 1966, as Agent at Mc Allen. Mr. Guttenberg was again used to work as Agent-Telegrapher at Elsa, Friday, June 24, 1966. He worked his regular assignment as Agent at Mc Allen, Saturday, June 25, 1966.

On each date, May 28, June 4 and June 25, 1966, Mr. Betts made claim for payment of eight hours at time and one-half rate, because, as he alleges, he was improperly relieved. Both employees incidentally had worked 40 hours in each of the weeks in question. The sole question to be determined is which of the two employees, the regularly assigned employee or the regularly assigned relief employee has preference.

There is no contention on behalf of the Claimant challenging the Carrier's right to divert Mr. Guttenberg to the Agent's position at Elsa, but they do contend that once diverted, he must observe the rest days of that position. Hence Claimant argues that in this type situation, Mr. Guttenberg must be considered as having been unavailable.

We have searched the record before us and the Agreement of the parties to find a rule which would sustain the position of the Claimant. We have been unsuccessful.

In the absence of a rule precluding the regular relief man, Mr. Guttenberg, from returning to his position on the dates of this claim, and in the

absence of a rule giving Claimant a preference, we must of necessity 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 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 21st day of May 1970.