

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Arthur W. Devine, 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 Company, that:

CLAIM NO. 1

(R.R. Docket 10833)

1. Carrier violated TCU Agreement as amended, when on July 16, 1967, it failed to properly notify each and every employe named in Groups A and B hereunder of the Carrier's decision to make force reductions by abolishing the position of each named employe.

2. Carrier further violated TCU Agreement as amended when it failed to properly compensate each and every employe named in Groups A and B for the loss of eight (8) hours' pay at straight time rate for Monday, July 17, 1967.

3. Carrier further violated TCU Agreement as amended when it failed to properly disallow individual time claims submitted by each and every employe named in Groups A and B.

Carrier shall now compensate for eight (8) hours at the applicable straight time rate of their individual position as noted by title and code each and every employe named in Groups A and B:

GROUP A

W. H. Keating, Tower Dr Dover 001, 7 A. M.-3 P. M.

G. DiMestico, Agt N Abington 001, 8 A. M.-5 P. M.

A. J. Covelle, Agt Roxbury 001, 8 A. M.-5 P. M.

A. A. Coulombo, F Agt Taunton, 007, 8 A. M.-5 P. M.

N. J. Monaghan, Agt Whitman 001, 8 A. M.-5 P. M.

P. P. Duguay, SS Opr Braintree 001, 8 A. M.-4 P. M.

W. Connolly, Sig Opr Chickering 001 (Relief 1) 7 A. M.-3 P. M.

J. N. Rousseau, SS Opr Walpole 001, 7 A. M.-3 P. M.
 A. Ames, Agt. Nwtn. Up Fls 001, 8 A. M.-5 P. M.
 A. P. Petrillo, Agt Needham Jct 001, 6:15 A. M.-2:15 P. M.
 J. Hannon, Agt Stoughton 001, 6 A. M.-3 P. M.
 P. Miller, Ch tr disp Bost 016, 7:55 A. M.-3:55 P. M.
 L. V. Cotnoir, Agt Clicquot 001, 7:30 A. M.-4:30 P. M.
 A. L. Thorell, Agt Walpole 001, 8 A. M.-5 P. M.
 P. C. Morrissey, Agt Needham 001, 6 A. M.-3 P. M.
 F. M. Miller, Agt Chelmsford 001, 8 A. M.-5 P. M.
 K. F. Milburn, Agt Norwood Cent 003, 6 A. M.-2 P. M.
 J. E. McMahon, Agt Franklin 001, 5:45 A. M.-1:45 P. M.
 M. E. McLeod, Agt Quincy 001, 8 A. M.-5 P. M.
 B. Boula, SS Opr Cotley Jct 001, 6 A. M.-2 P. M.
 D. MacDermott, Agt Marlboro 001, 8 A. M.-5 P. M.
 G. C. Herbert, Agt Hingham 001, 8 A. M.-5 P. M.
 V. J. Falzone, Agt Buz Bay 001, 5 A. M.-1 P. M.
 A. Avila, SS Opr Myricks 001, 5 A. M.-1 P. M.
 J. Fernandes III, Tckt Agt Newport 001, 8 A. M.-5 P. M.
 (All above assigned to so-called first trick)

GROUP B

J. L. Carroll, SS Opr Walpole 002, 3 P. M.-11 P. M.
 G. D. Lambert, SS Opr Chick 002, 3 P. M.-11 P. M.
 E. E. Bowles, SS Opr Cotley Jct 002, 2 P. M.-10 P. M.
 L. R. Gammon, SS Opr Braintree, 4 P. M.-12Mn
 R. J. Giro, Tower Dr Dover 002, 3 P. M.-11 P. M.
 C. J. Jennings, Agt Buz Bay 002, 10 A. M.-6 P. M.
 J. E. Geary, Agt Needham Jct 002, 2:15 P. M.-10:15 P. M.
 J. P. Pasquine, SS Opr Readville 002 (Relief 5) 3 P. M.-11 P. M.
 J. Crowley, Agt Norwood Cent 002, 2 P. M.-10 P. M.
 M. Pacheco, Jr., SS Opr Whitten Jct 002, 2:55 P. M.-10:55 P. M.
 B. Affonso, Agt Franklin 002, 1:45 P. M.-9:45 P. M.
 (All assigned to so-called second trick)

CLAIM NO. 2

(R.R. Docket 10853)

1. Carrier violated Article III of June 5, 1962 and Article VI of August 21, 1954 Agreements of Transportation-Communication Employees Union, when it arbitrarily and improperly abolished on July 17th, 1967, positions listed in Statement of Facts without proper notice.

2. Carrier shall compensate at the pro-rata rate of positions listed in Statement of Facts the following: Paul W. Lavoie; John McGrath; David N. Koziy; John F. Vermoiren; James J. Walsh; John A. Morgan; Dennis Dalzell; Carl A. Snyder; Luther E. Daniels;

Mark A. Rose; Clyde W. Zuckweiler; Frederick L. Hepburn; Edward H. Smith, Jr.; Ernest I. Smith; Everett E. Sanderson; George F. Proper; John Gordan; Bert A. Johnson; Bruce A. Hill; Hugh G. Orr; Charles R. Sisson; Edward L. Calamar; William J. Coutanche; Peter N. Varrica; Charles K. Stiles; Donald J. Houston; Robert A. Hirst; Joseph M. McCabe; John F. Cody; James H. Moran; William H. Smith; Robert L. Goudreau; Oscar Demers; Francis S. Bojdunik; Thomas J. Richards; Norman H. LaMothe; John J. Walsh; Clifford J. Sweeney; Raymond E. Phippen; Paul E. Goudreau; Joseph E. Gerstenlauer; Joseph R. Serpa; Elliot V. Swan; Joseph H. Iskierski; Ralph H. Hopper; William J. Riordan; Glennen P. Joly, Ellsworth E. Williams; Raymond F. Mastantuono; Eugene E. Brown, John J. Handrigen, 3rd; Norman G. Desrosiers; John J. Corrigan; Harold G. Andrews; George J. Bundza; Leonard J. Walczak, George T. Smith; Donald W. McCaw; Charles E. Barry; Everett D. Kingsley; Louis G. Brousseau; Leo P. Rushlow; Raymond H. Leonard; Robert R. Chaput; Alfred D. D'Almeida; Russell J. Monast; Wallace H. Parenteau; and John V. Sanocki.

3. Carrier shall compensate S. S. Operator John Kelley eight (8) hours at time and one-half rate of position, S. S. Operator Mystic, Ct., account improperly abolishing first trick S. S. Operator's position on July 17, 1967, which was also claimant's Birthday Holiday.

4. Carrier shall compensate any other employees on Providence Roster District, Boston Division, not named above whose position was improperly abolished on July 17th, 1967.

STATEMENT OF FACTS: On the evening of Sunday, July 16th, 1967, and continuing into the morning and afternoon of Monday, July 17th, 1967, claimants listed below received, via telephone, message from Chief or Trick Train Dispatchers as follows:

"Effective 12:01 A.M., July 17th, 1967, your position [name of position] is abolished."

Claimants were notified as follows:

Position - Claimant - Time and Date Notice Given

Car Distributor - Paul W. Lavoie - 4 A. M., 7/17/67
 Agt. Branford, Ct. - John McGrath - 1 A. M., 7/17/67
 Agt. Guilford, Ct. - David N. Koziy - 11:30 P. M., 7/17/67
 S.S. Oper., Guilford, Ct. - John F. Vermeiren - 12:15 A. M., 7/17/67
 Agt. Clinton, Ct. - James J. Walsh - 2:15 A. M., 7/17/67
 Opr.-Clk. Old Saybrook, Ct. - John A. Morgan - 5 A. M., 7/17/67
 Opr.-Clk. Old Saybrook, Ct. - Dennis Dalzell - 9 P. M., 7/16/67
 S.S. Opr. Conn. R. Draw, Ct. - Bert A. Johnson - 2 A. M., 7/17/67
 S.S. Opr. Conn. R. Draw, Ct. - Bruce A. Hill - 9:30 A. M., 7/17/67
 S.S. Opr. Niantic R. Draw, Ct. - Carl A. Snyder - 12:05 A. M., 7/17/67
 S.S. Opr. Niantic R. Draw, Ct. - Luther R. Daniels - 7 P. M., 7/16/67
 S.S. Opr. Waterford, Ct. - Mark A. Rose - 5 P. M., 7/17/67

homes, and they began calling the employees under their respective jurisdictions, advising them not to report for work on the 17th. Those employees who were on duty on the middle and last tricks were notified to finish their tour of duty and not to report until further advised.

Claims were initiated on behalf of the claimants and progressed through the prescribed channels on the property, up to and including the undersigned.

Claims were denied on the property based upon the grounds that they represented a blanket claim in that no consideration was given each claimant regarding the actual facts in connection with each employee named and that the 16-hour advance notice requirement is null and void in the circumstances involved in the instant dispute. The Employees have not presented any evidence which would support in any way that the claimants would have crossed the picket lines and reported for duty on the day in question, nor is there any evidence that any of the claimants reported for duty and were refused the opportunity to go to work.

CARRIER'S EXHIBIT A — Carrier's decision in Claim No. 1.

CARRIER'S EXHIBIT B — Carrier's decision in Claim No. 2.

CARRIER'S EXHIBIT C — Carrier's decision in Claim No. 3.

CARRIER'S EXHIBIT D — Carrier's decision in Claim No. 4.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The claims herein arose in connection with the abolishment of positions or force reduction as result of a strike by Shop Craft employees effective 12:01 A. M., July 17, 1967.

Numerous procedural contentions have been advanced by both parties. The Carrier contended on the property and contends before the Board that the sixteen-hour notice requirement of Article VI of the Agreement of August 21, 1954, is not applicable under the circumstances here involved. We reject such contention. The rule, by its own terms, is clearly applicable in strike situations. The Carrier also contends that the claims presented represent blanket claims. We agree with this contention only so far as Part 4 of Claim No. 2 is concerned, and it will be dismissed. The balance of the claims meet the procedural requirements of the Agreement.

The Carrier contends further that some of the Claimants were "spare" employees, and not subject to Article VI of the August 21, 1954 Agreement, which it contends applies only to regular employees. The Board is of the opinion, and so holds, that all employees who were scheduled to work positions covered by the Agreement on July 17, 1967, were entitled to sixteen hours' notice under Article VI of the August 21, 1954 Agreement, whether such employees were considered regular, extra or spare employees. The sixteen-hour notice would not be applicable to spare or extra employees who were not scheduled to work on July 7, 1967.

The Petitioner contends that some of the claims were not properly denied because the Superintendent allegedly gave no reason for denial when the time slips were submitted by Claimants. The Carrier contends that it is normal procedure on the property to deny individual time returns by stamping them "Declined — no basis" over the Superintendent's signature or in behalf of the Superintendent and return the time slip to the Claimant; that in such cases formal or written claim is then made to the Superintendent, and that this has been the procedure for years. Under the circumstances, the Board finds no proper basis for the contention of the Petitioner in this respect, and it is also rejected.

Proceeding to the merits of the dispute, the record shows that Claimants were advised by telephone not to report for work on July 17, 1967. In some cases the hours of assignment of the Claimants are given, but the actual time of telephone notice is not given. In other cases the time of telephone notice is given, but the hours of assignment are not given.

In the application of the sixteen-hour rule it is established (1) that telephone notice is sufficient and written notice is not required (Awards 17014, 17674, 17964); and (2) that the sixteen-hour notice applies to clock hours from the time the notice was actually given (Awards 17708, 17780, 17958, 17964). In our present case those employees who may have received less than sixteen hours' notice from the time contacted by telephone to the starting time of the position scheduled to work on July 17, 1967, are entitled to pay from starting time of assignment to the expiration of sixteen hours from time of notice at straight time rate, except where July 17, 1967 may have been a holiday or assigned rest day on which they had been scheduled to work, in which event they are entitled to time and one-half rate. Those who actually received sixteen hours' notice prior to the starting time of the positions scheduled to work on July 17, 1967, are not entitled to additional compensation.

From the record before us it is impossible to make an accurate determination as to the actual amount of notice each of the Claimants received, although it is evident that some of the Claimants actually received less than sixteen hours. The compensatory portion of the claim will, therefore, be remanded to the parties to attempt to arrive at a settlement in line with the foregoing. If satisfactory settlement cannot be arrived at with respect to any particular Claimant or Claimants within sixty days from date of this Award, any remaining unsettled question may be returned to the Board jointly or ex parte by either side.

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 violated to the extent shown in Opinion.

AWARD

Claim sustained as to violation of the Agreement to the extent indicated in Opinion and Findings; compensatory portion of claim remanded to parties in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1970.