Award No. 18399
Docket No. TE-18643

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Company, that:

1. Carrier violated the terms of the Transportation-Communication Employees' Union Agreement, when it suspended Mr. F. H. Keil, incumbent of the Second Trick, Poughkeepsie Ticket, on a holddown basis, from working the assigned hours of his assigned position on August 26, 29, 30 and 31, 1968.

2. Carrier shall now be required to compensate Mr. F. H. Keil 8 (eight) hours at pro rata rate for being suspended from performing service on his assigned position on August 26, 29, 30 and 31, 1968.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute is predicated upon various provisions of the collective bargaining agreement, entered into by the parties hereto, effective July 1, 1948, as amended January 1, 1953 and supplemented and by this reference is made a part hereof.

The claim was handled in the usual manner on the property up to and including the highest Carrier officer designated to handle claims and grievances, including conference December 10, 1968, and denied.

The dispute arose because Carrier required Claimant to work off his regular assignment to perform vacation relief, when another qualified employe was available.

Carrier contended two points: (1) That Claimant was guaranteed extra list employe, therefore, Article 13(a) did not apply, and (2) by the Memorandum of Agreement of December 10, 1962, paragraph 4, it gave Carrier the right to use him in the manner it did.

Employes contend Claimant was assigned the vacancy, therefore, it was in violation to remove him from his regular holddown position on the dates claimed.

Claimant presented a claim for payment of an additional eight (8) hours on each of the dates of August 26, 29, 30 and 31, 1968, such claim being premised upon a contention that he was improperly suspended from working the hours of "his assigned position" at Poughkeepsie and in lieu thereof was used to fill the vacation vacancy in the position of the Agent at Beacon, New York.

The claim was denied and was subsequently progressed on the property in the usual manner, up to and including the Assistant General Manager–Employe Relations (now Superintendent–Labor Relations and Personnel), who is the highest officer of the Carrier designated to handle such disputes on the Region. The Assistant General Manager–Employe Relations denied the claim in a letter dated December 3, 1968.

OPINION OF BOARD: Claimant was a member of the guaranteed extra list.

He was used to fill the vacation vacancy of the telephone-clerk at Poughkeepsie, New York, ticket office. During this vacation relief assignment — August 26 — he was used to fill the vacation vacancy in the Agent's position at Beacon, New York.

Carrier tells us he was the only available, qualified employe on the extra list.

In handling the matter on the property, the Organization argued that Rule 13 of the Agreement between these parties is binding and it prohibits the use of this Claimant, as he was assigned.

The Carrier said Article 13(a) applied only to "Regular Employes Performing Relief Work", and did not apply to an employe who was on the extra board.

The Organization, in hearings before this Board, raises the proposition that it is Rule 2(d) and (e) which weighs on this case.

Carrier's representative to the Referee Hearing agreed that the entire Agreement is before the Board.

Rule 21 (e) says:

> "When an extra employe, substituting for a regular employe, is transferred in accordance with Article 13, he shall be returned to his former assignment as soon as the emergency ceases, providing position has not been filled through displacement by a senior employe."

The Organization contends that the Claimant was so assigned and no emergency exists.

The Carrier, however, never alleged that an emergency existed, but that it had the authority under other provisions of the Agreement to assign the extra employe as it did without Rule 13 ever becoming involved.

We find Carrier, under the existing circumstances, did assign Claimant properly and that Rule 21 (e) does not apply.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.

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