

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Penn Central Transportation Company (New Haven District), T-C 5789, that:

Carrier violated the T.C.E.U. Agreement of September 1, 1949 when it blanked two positions at the "NH" Office on the following dates: July 21 through 25 inclusive, July 28 through August 1 inclusive, August 4 through August 8 inclusive, August 10 through August 15 inclusive, August 18 through August 22 inclusive, August 25 through August 29 inclusive, September 1 through September 5 inclusive, all in 1969.

It further violated the Agreement when it blanked Mr. Hildebrand's own position the following dates: August 13, 14, 20, 21, 27, 28, September 3 and 4, 1969.

It continued to violate the Agreement when it blanked another position on the rest days on the following dates: August 9, 10, 16, 17, 23, 24, 30, 31 and September 6, 1969. The hours of the positions are as follows:

First violation: Two positions — 9:30 A. M. — 5:30 P. M.
11:30 A. M. — 7:30 P. M.

Second violation: 11:30 P. M. — 7:30 A. M.

Third violation: 3:30 P. M. — 11:30 P. M.

(The above represents the claim as initially filed by the District Chairman, all of which has been resolved except that portion which is boldface.)

EMPLOYES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

The instant dispute arose because Carrier, although it was required to do so, failed to use the Claimant to work his regularly assigned position on his assigned rest days. Carrier also failed and refused to bulletin two (2) tem-

held by Mr. R. G. Herzog. Under date of July 15, 1969, the Carrier issued a 90-day notice to the Organization of its intent to abolish the two positions referred to above. See Carrier's Exhibit "A." In order to protect the service during the hours of 3:30 P. M. to 11:30 P. M., previously worked by Mr. Carleton prior to retirement, Mr. Herzog's assigned starting time was changed from 11:30 A. M. to 3:30 P. M. in accordance with Article 5 (c) of the schedule Agreement. These abolishments and changes were predicated upon the fact that there had been a significant reduction in the number of messages handled at this facility. This reduction in messages was mainly due to the closing of all former New Haven Railroad off-line freight sales' offices throughout the country and the Carrier's desire to utilize the telephone wherever possible rather than send communications via telegraph.

Claimant presented claim for eight (8) hours' pay at the rate of time and one-half for each of the dates shown in the underscored portion of the Employees' Statement of Claim which were rest days of his assignment—it being his contention that his position was "blanked" and that he should have been used during the third trick hours on his rest days.

The claim was denied, and was subsequently progressed in the usual manner up to and including the highest Carrier officer designated to handle such disputes.

Your Board's attention is called to the fact that the Employees have withdrawn Parts 1 and 3 of their original claim and have elected to progress Part 2, claim for eight hours at the punitive rate of pay on the rest days of his assignment, August 13, 14, 20, 21, 27, 28, September 3 and 4, 1969.

Attached in exhibit form is copy of pertinent correspondence:

"B" — Assistant General Chairman's appeal

"C" — Carrier's final decision

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: Exhaustive study of this confusing record discloses a contention by the Petitioner that the Carrier violated the Agreement by its failure to use Claimant Hildebrand to work his position on certain of its rest days, and that all other portions of the claim have been resolved.

The position of the Employees boils down to a contention that under the Agreement of November 8, 1960, a short vacancy must be filled by one or another of the means therein provided. Carrier disagrees.

Before the Board can deal with the resulting issue it must have some definite and pertinent facts against which to consider the rule provisions alleged to have been violated. But no such facts are provided. Nowhere in the record is there any evidence to show in what assignment the alleged vacancy occurred, nor is there any indication of a reason for a vacancy having occurred. Certainly there was no vacancy in the claimant's own work-day assignment, and there is nothing in the record to show, or even to allege, that a relief assignment existed.

It is well settled by awards of this Board, so numerous that specific citations are unnecessary, that the burden of establishing all essential elements of a claim lies with the petitioner. The Petitioner in the instant case has not met that burden and the claim, therefore, must be denied.

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 no violation of the Agreement is shown.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December 1971.