Award No. 19165
Docket No. TE-19244

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES (Formerly 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 (New Haven District), T-C 5796, that:

Carrier violated the provisions of the T.C.E.U. agreement of September 1, 1949, Art. 15, paragraph B when it failed to move Agent-Opr. M. Ceccarelli from Agent position at Branchville, Conn. to Agent position at Springdale, Conn., within twenty-five (25) days of the date of telegraphers bid sheet No. 12 dated 11/7/68, and properly compensate him all monies due.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties effective September 1, 1949 as amended and supplemented, is available to your Board and by this reference is made a part hereof. The claim was handled in the proper manner on the property, appealed to the highest Carrier officer designtaed to handle claims and grievances and declined. Conference was held November 20, 1969.

The dispute arose because Carrier after compensating Claimant for travel time between Branchville and Springdale, Connecticut later recovered the amount ($395.06) from Claimant in payroll deductions.

Carrier in denying the claim gave as the reason; since Claimant did not actually travel to and from the points in question he was not entitled to the travel time.

Employes contend Claimant in being awarded the position at Springdale was to be considered as being on that position and entitled to all benefits attached to that position, this included the travel time.

OPINION OF BOARD: Claimant M. A. Ceccarelli had a regular assignment as Agent-Operator at Branchville, Connecticut. He bid in and was awarded another Agent-Operator's position at Springdale, Connecticut. The Claimant was not transferred to his bid-in assignment within twenty five days from the date of the bulletin and he asked for and was given travel time from Branchville to Springdale from December 2, 1968, to January 28, 1969. Later Carrier deducted from Claimant's pay the travel time payment which had been made to him on the groud that no actual travel time had been consumed.

Article 15(b) requires that the successful bidder for a vacancy shall be placed thereon within twenty-five days from the date of the bulletin. Article 15(b) reads in part as follows:

> "* * * The successful applicant for the position will be promptly notified and within twenty-five days from date of bulletin the transfer will be made. * * *"

The above language is clearly mandatory and binding upon Carrier. It is qualified only by the language in Article 29 which provides that "regularly assigned employes will not be required to work at other than their regular positions, except in cases of emergency." (Emphasis ours.)

If there was no emergency and Claimant was required to work in a position other than his regular position, Carrier would be in violation of Rule 15(b) and Claimant would be entitled to compensation for those losses which flow from the violation. We then reach the question whether absent the violation Claimant would have traveled every day between Branchville and Springdale. The record is not very helpful on the point. Moreover, the Organization in its ex parte submission contends that such travel would have taken place, absent the violation, while Carrier in its rebuttal contends that had Claimant been transferred to Springdale there would be no travel pay involved.

In view of the foregoing, **if we assume there was no emergency,** the record is so inconclusive on the point of whether Claimant would have enjoyed travel pay, absent a rule violation, that we cannot make a sustaining award under such assumption.

If we consider the facts in this case **under the assumption that there was an emergency,** then the claim would have to be considered in the light of Article 29 which reads as follows:

> "Regularly assigned employes will not be required to work at other than their regular positions, except in cases of emergency. When required to work temporarily at other than their regular positions, employes shall be paid at the higher rate of the two positions and in addition shall be allowed any actual necessary expenses incurred and straight time rate for time consumed in traveling and waiting enroute to and from such temporary assignment. In no event will the employe receive less pay than he would have received had he not been used in such emergency service."

Carrier contends that under the language of Article 29 regular employes are allowed the straight time rate for time consumed in traveling and that the inclusion of the word "consumed" can only mean the time actually spent traveling and waiting. Consequently Carrier argues that since Claimant did not actually travel between Springdale and Branchville he may not collect travel pay.

While it is true that Article 29 does refer to "time consumed in traveling," it also provides: "In no event will the employe receive less pay than he would have received had he not been used in such emergency." We think this language is broad enough in scope to include in its meaning that in no event should a employe receive less in travel pay than he would have received absent the emergency.

This brings us again to the question whether, if he had been transferred to Springdale, Claimant would have traveled every day between Branchville and Springdale. We must answer the question by pointing out that the record was of little help on the point and that Carrier and the Organization took varying positions in their argument. Had the Employes been able to clearly establish that, if transferred, Claimant would have traveled each day between Branchville and Springdale, the claim would have been sustained. Because of the lack of adequate information on the point in the record, the claim 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1972.

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