

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22435  
Docket Number CL-22395

Abraham Weiss, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8511) that:

(1) Carrier violated the Agreement between the parties when on the dates of August 5, 7, 12, 13, 14, 18, 19, 20, 21, 25, 26, 27, 28, September 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 29, October 14, 15, 21, 22, 27, 28, 29, 30, November 10, 11, 12, 13, 24, 26, 27, December 1, 23, 24, 29, 1976 and January 19, 1977, because of its requirement and allowance of a regularly-assigned Operator performing work on an assigned Train Dispatcher position to return to his Operator position weekly and work his Dispatcher's rest-days after having worked both preceding rest-days of his Operators position, did cause the improper displacement and denial of rights of employees filling short vacancies, and

(2) Carrier shall, as a consequence, be required to compensate improperly-displaced employee A. R. Brougham additional compensation for the dates in question, as follows:

|                         |                         |
|-------------------------|-------------------------|
| August 5 - 4 hours      | September 1 - 8 hours   |
| August 12 - 4 hours     | September 2 - 12 hours  |
| August 18 - 8 hours     | September 8 - 8 hours   |
| August 19 - 4 hours     | September 9 - 12 hours  |
| August 25 - 8 hours     | September 15 - 8 hours  |
| August 26 - 4 hours     | September 16 - 12 hours |
| September 22 - 8 hours  | November 10 - 8 hours   |
| September 23 - 12 hours | November 11 - 12 hours  |
| September 29 - 8 hours  | November 24 - 8 hours   |
| October 14 - 8 hours    | December 1 - 8 hours    |
| October 21 - 8 hours    | December 23 - 8 hours   |
| October 27 - 8 hours    | December 29 - 8 hours   |
| October 28 - 12 hours   | January 19 - 8 hours    |

and

(3) Carrier shall also be required to compensate improperly displaced employee M. D. Smith additional compensation for the dates in question, as follows:

|                        |                         |
|------------------------|-------------------------|
| August 19 - 4 hours    | September 10 - 8 hours  |
| August 26 - 4 hours    | September 11 - 8 hours  |
| September 2 - 12 hours | September 16 - 12 hours |
| September 3 - 8 hours  | September 17 - 8 hours  |
| September 4 - 8 hours  | September 18 - 8 hours  |
| September 9 - 12 hours | September 23 - 12 hours |
| September 24 - 8 hours | October 30 - 8 hours    |
| September 25 - 8 hours | November 11 - 12 hours  |
| October 15 - 8 hours   | November 12 - 8 hours   |
| October 22 - 8 hours   | November 13 - 8 hours   |
| October 28 - 12 hours  | November 26 - 8 hours   |
| October 29 - 8 hours   | November 27 - 8 hours   |

And, in addition to the foregoing on behalf of Mr. M. D. Smith, the difference in compensation between the rate of pay attached to HX Tower, the step-up position, and JD Tower, the position to which returned through such impropriety, for each date of August 7, 13, 14, 20, 21, 27, 28, September 3, 4, 10, 11, 17, 18, 24 and 25, 1976.

OPINION OF BOARD: A reading of the record discloses that during the period described in the Statement of Claim, Mr. H. E. Bair, regularly assigned Telegraph Operator at HX Tower, Baltimore, Maryland, 3:00 P.M. to 11:00 P.M., Sunday through Thursday (rest days Friday and Saturday), was used to fill a Train Dispatcher's vacancy at Baltimore, Maryland, on a position working 3:00 P.M. to 11:00 P.M., Friday through Tuesday of each week (rest days Wednesday and Thursday). On Wednesday and Thursday rest days of the dispatcher's position, Mr. Bair was permitted to work his own Telegraph Operator's position.

Claimant, A. R. Brougham, was regularly assigned as a Relief Telegraph Operator at HX Tower, Baltimore, Maryland, and was used to fill the second trick vacancy of Mr. Bair on Sunday, Monday and Tuesday of each week during the claim period.

Claimant, M. D. Smith, was regularly assigned as a Telegraph Operator at JD Tower, Hyattsville, Maryland, and was used to fill Mr. Brougham's vacancy on the days he was filling Mr. Bair's vacancy.

The claims as presented by Mr. Brougham and Mr. Smith contend that Mr. Bair should not have been permitted to work on his regular Telegraph Operator's position on Wednesday and Thursday during the period of the claim.

Rule 41, upon which Petitioner relies, lists under paragraph (e) thereof - which is applicable here - four (4) instances wherein a regularly assigned Telegraph Operator who performs extra work as a Train Dispatcher may not claim the right to work within the hours of his Telegraph Operator's assignment. None of those four (4) instances prohibits the type of situation complained of herein.

It may well be, as Petitioner contends, that the intent of the Agreement was to confine such employees to not more than five (5) days' work per week. However, the four (4) situations outlined in Rule 41(e) do not prohibit an employee such as Mr. Bair from claiming the right to work on his own regular Telegraph Operator's position as he did in this case. If the framers of the Rule had intended that an employee be denied the right to work his own position in circumstances such as we have here, then another or different prohibition would have been included in Rule 41(e). This Board cannot:

" . . . inject our predilections as to what is fair, just and equitable. Nor can we engage in speculation as to what might have been in the minds of the parties, but not evidenced in the Agreement as executed, or otherwise proven." (Third Division Award No. 12558, Referee Dorsey)

We may not add the additional prohibition to the Rule, under the guise of interpretation. The claim herein 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 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: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.

JUL 16 1979