

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25808  
Docket Number CL-24944

R. E. Dennis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9695) that:

1. (a) The Carrier violated Section 5 of the Norfolk and Western Protective Agreement and Articles 2(d) and 7 of the Current Agreement when Mr. J. K. Neiles was advised by letter dated April 24, 1980 that, effective with close of business May 6, 1980, his assignment was changed from Agent at West Rutland, Vt., to Relief Agent at Saratoga Springs, N.Y.

(b) Claimant, J. K. Neiles be compensated at the rate of time and one-half from May 7, 1980 and each and every day Claimant is working unassigned position at Saratoga Springs, N.Y. (41-80)

2. (a) Claim on behalf of Mr. K. F. Linihan, Jr., due to the abolishment of his position, Relief Agent/Telegrapher at Ft. Edward/Saratoga, N.Y. May 6, 1980. (61-80)

(b) Claim is presented for one day's pay at pro-rata rate for the following dates, May 14, 15, 16 and 17, 1980. Violation of Current Agreement Order of Railroad Telegrapher Rule 2(D).

(c) Mr. J. Neiles Agent/Telegrapher was advised to cover the abolished position at Ft. Edward/Saratoga, N.Y. Mr. Neiles' position was not abolished and he was advised to cover dates, hours and location of the abolished position.

3. (a) Claim of Mr. K. F. Linihan, Jr., due to the abolishment of his position, Relief Agent/Telegrapher at Ft. Edward/Saratoga, N.Y. May 6, 1980. (62-80)

(b) Claim is presented for one day's pay at pro-rata rate for the following dates: May 23, 25, 31, June 1, 7, 8, 14, 20, 21, 22, 23, 24, 25, 26, 27 and June 29, 1980. Violation of Current Agreement Order of Railroad Telegrapher Rule 2(D).

(c) Mr. J. Neiles Agent/Telegrapher was advised to cover the abolished position at Ft. Edward/Saratoga, N.Y. Mr. Neiles' position was not abolished and he was advised to cover dates, hours and location of abolished position.

4. (a) Claim of Mr. K. F. Linihan, Jr., due to the abolishment of his position, Relief Agent/Telegrapher at Ft. Edward/Saratoga, N.Y. May 6, 1980.(64-80)

(b) Claim is presented for one day's pay at pro-rata rate for the following dates: July 2, 3, 7, 11, 12, 14, 15, 16, 21, 22, 23, and July 24, 1980. Violation of Current Agreement Order of Railroad Telegrapher Rule 2(D).

(c) Mr. J. Neiles, Agent/Telegrapher was advised to cover the abolished position at Ft. Edward/Saratoga, N.Y. Mr. Neiles' position was not abolished and he was advised to cover dates, hours and location of the abolished position.

OPINION OF BOARD: The facts in this case are not in dispute. On April 24, 1980, Relief Agent K. F. Linithan was notified that at the close of business, May 6, 1980, his position would be abolished.

Also, on April 24, 1980, regularly assigned Agent James Neiles was notified that he was to be the Relief Agent relieving the positions that Relief Agent Linihan previously relieved and, in addition, he was notified that his rest days of Saturday and Sunday would be changed to Wednesday and Thursday.

The Organization contends that Carrier violated the Agreement(s) by not serving the required ninety (90) day advance notice on the Organization and the employee affected to abolish the Relief Agent position and that Carrier further violated the Agreement with respect to Claimant Neiles when, as the holder of a regular assignment, he was required to do relief work other than in an emergency condition.

The applicable Protective Agreement provision, Section 5(d), reads as follows:

"The Carrier shall give the General Chairman and the employee involved a written 90 day advance notice of any intended permanent abolishment of a position, except as provided in Section 1(d) and 2(b) of this agreement. Prior to the expiration of the 90 day period the General Chairman shall, upon request, be given a conference with representatives of the Carrier for a joint discussion of all phases of the questions raised by the 90 day notice, including the wisdom and necessity of such position abolishment and the manner in which and the extent to which employees may be affected by the change involved, with a view to avoiding grievances and minimizing adverse effects on employees involved and to facilitate the application of this agreement."

The exceptions of Section 1(d) and 2(b) are not applicable herein.

Article 7 of the Schedule Agreement reads as follows:

"Employees holding temporary or regular assignments will not be required to do relief work, except in emergencies. When required to perform such emergency service, employees shall be paid time and one-half rate of the higher rate of the two positions for time worked outside of the hours of their regular assignments and straight time rate for the hours worked inside of their regular assignments; allowed actual necessary expenses for lodging and meals; shall be paid at straight time rate of the higher rate of the two positions for time consumed in waiting and traveling between the emergency assignment and the temporary or regular assignment; shall be furnished free transportation or the equivalent in the form of fares paid or automobile mileage.

Traveling and waiting time shall be paid for only the initial and final trips, except the Carrier may elect to allow daily travel and waiting time instead of lodging expense.

No time shall be lost by an employee because of this emergency service, and in no event will less than one day's pay be allowed for each twenty-four (24) hour period held away from regular or temporary assignment."

In addition to the foregoing, the Organization also alleges that other Rules were violated. We do not, however, consider it necessary to consider those Rules.

There is no evidence of record to show that Carrier complied with Section 5(d) of the Protective Agreement when it abolished the Relief Agent position.

The language of Section 5(d) requires a written ninety (90) day advance notice to the General Chairman and the employee (Claimant Linihan in this case) and that notice was issued. Article 7 very clearly prohibits a regular assigned employee from being required to do relief work, except in emergencies. Carrier does not contend that an emergency existed in the instant dispute. We have considered Carrier's argument and the Rules it has cited, but must hold that they are not applicable to the situation herein.

With respect to compensation due Claimants, we have no problem with Claimant Linihan's Claim as it is only for specific dates, all of which fall within the applicable ninety (90) day notice period.

Claimant Neiles is entitled to be compensated in accordance with Article 7. i.e., the time and one-half rate viz:

"When required to perform such emergency service, employees shall be paid time and one-half rate of the higher rate of the two positions for time worked outside of the hours of their regular assignment.\* \* \*."

Thus, Claimant Neiles is entitled to the time-and-one-half rate at the highest rate of the two positions, including the time-and-one-half rate for service performed on Saturdays and Sundays during the period of Claim.

The record reveals that Claimant Neiles displaced a Junior Agent, effective July 3, 1980, and accordingly payment is ordered only through July 2, 1980. In all other respects, the Claims are 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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1985.