

SPECIAL BOARD OF ADJUSTMENT NO. 132

PARTIES: THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 67

STATEMENT
OF CLAIM:

1. Carrier violated the agreement between the parties hereto when on January 8, 15, 22, 29; February 5, 12, 19 and 26; March 5, 12, 19, 26; April 2, 9, 23, 30; May 7 and 14, 1949; June 13, 14, 27, 28; July 4, 5, 11, 12, 18, 19, 26, 27; August 1, 2, 8, 9, 15, 16, 22, 23, 29, 30; and September 5, 6, 12 and 13, 1950, it caused required and permitted an employee holding no rights under the Telegraphers' Agreement to relieve Mr. J. E. Dean, the regularly assigned Ticket Agent at McKeesport, Pennsylvania, on his rest days.

2. Carrier be required to compensate Mr. J. E. Dean, the regularly assigned ticket agent at McKeesport at the rate of time and one-half for on each date listed above when he was improperly relieved on his rest days by an employee not covered by the Telegraphers' Agreement.

FINDINGS:

On the dates of claim an employee holding no rights under the Telegraphers' Agreement worked the relief day of the claimant's position. The claim was filed with Carrier's Superintendent on April 11, 1951. Carrier concedes that the Agreement was violated but resists payment of any money on the ground that this is a "back-in" claim.

In situations where the employees acquiesce over a considerable period of time in a practice which is patently violative of the schedule the Third Division, National Railroad Adjustment Board has frequently refused to direct the payment of penalties for dates prior to the time of bringing the violation to the Carrier's attention. This is on the sound theory that it is inequitable for the employees to sit idly by over a long period of time acquiescing in agreement violations and permitting the accumulation of penalties which the Carrier might have avoided if the violation had been called to its attention at an earlier date. In the instant case, however, it is shown that as early as August 18, 1948 the Carrier's Manager Labor Relations allowed a claim of a nature identical to this. In his letter to the General Chairman the said official stated he was issuing instructions that where relief cannot be furnished an employee occupying a seven day position the work on that position would not be performed by employees not covered by the Agreement even if it be necessary to use the regular assignee on his rest day. It cannot logically be said that it was the employees' failure to bring such violations to the Carrier's attention which permitted the accumulation of the penalties here involved.

The proper penalty is the pro rata rate and we find that the claim should be paid at that rate.

A W A R D

Claim (1) sustained.

Claim (2) sustained at the pro rata rate.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

/s/ B. N. Kinkead
B. N. Kinkead
Employee Member

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Md., this
26th day of April, 1957.