

AWARD NO. 12

Case No. 15

SPECIAL BOARD OF ADJUSTMENT NO. 259

THE ORDER OF RAILROAD TELEGRAPHERS)
vs)
NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT)
(except Boston and Albany Division) and NEW)
YORK DISTRICT)

STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers
on the New York Central System (Eastern District), that:

1. Carrier violated the Telegraphers' Agreement when on April 5, 1956, it required H. D. Homan, Relief Position #28, Canastota, New York, to suspend work on his regular assigned position and was used to perform relief service on the 2nd trick at SS-41.
2. Carrier shall compensate H. D. Homan the difference between the pro rata rate, which was paid H. D. Homan for relief service performed on April 5, 1956, and the punitive rate which he should have been paid.
3. Carrier shall also compensate the claimant eight (8) hours at the pro rata rate of his assigned position for being required to suspend work on his regular assigned position.

OPINION OF BOARD:

At 2:05 P.M. on Thursday, April 5, 1956 Telegrapher-Leverman F. C. Tietz, who was regularly assigned to the second trick, 4:00 P.M. to 12:00 Midnight, at SS-41, Canastota, New York, reported that he would be unable to report for duty on that date due to personal illness. There being no available qualified extra employee to cover the vacancy, Carrier attempted to contact third trick Telephoner-Leverman D. R. Zimmerman who was off on rest day on that date. Zimmerman's wife advised that he was not in, but that she would try to reach him. At 2:55 P.M. Mrs. Zimmerman reported that her husband would not be available before dinner time.

Since employee Zimmerman was not available in time to cover the second trick commencing at 4:00 P.M., Carrier instructed Claimant Homan to work that trick. Claimant was regularly scheduled to provide relief coverage for the third trick commencing at Midnight on that date. Employee Zimmerman later became available and was used to cover the third trick, from which Claimant Homan was temporarily transferred as above-indicated.

The basis asserted for the subject claim is that Claimant was required to suspend work on his regularly assigned position in violation of the Agreement, and that he also was improperly paid only the pro rata rate, instead of the punitive rate, for the second trick work performed in the absence of the regular second trick Telegrapher-Leverman at SS-41.

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While a number of Agreement provisions have been cited as pertinent to this controversy, we find that the controlling provision is Article 13, entitled "Regular Employees Performing Relief Work." Paragraph (a) of this Article states in pertinent part:

"Regularly assigned employees will not be required to perform service on other than their regular positions, except in emergencies."

Thus the question to be decided is whether the disputed assignment of Claimant Homan was made necessary by the existence of an emergency.

The Organization asserts there was no emergency in the subject instance. In support of this assertion, it contends that either Telephoner-Leverman J. L. Deep or Telephoner-Leverman L. J. Johnson, each being on his rest day on the date in question, could have been used to cover the second trick vacancy at SS-41.

The evidence discloses that employee Johnson was scheduled to work the first trick at SS-34 on the next day (April 6) as part of his regular assignment. Had he been used to cover the vacancy here in dispute, Johnson could not have worked his scheduled hours on April 6 due to the Hours of Service Law. Thus he must be considered as not having been available to cover the second trick vacancy at SS-41 on April 5. Employee Deep is regularly assigned as Telephoner-Leverman at SS-31 at Utica, New York. The distance between Canastota and Utica is approximately 27 miles by automobile. It will be recalled that Carrier waited until almost 3:00 P.M. on April 5 in the hope that employee Zimmerman could be called out on his rest day to protect the second trick vacancy at Canastota. Under these circumstances, we are of the opinion that Carrier could not reasonably have been expected to attempt to obtain the services of employee Deep, and that in consequence, Management was faced with an emergency. We conclude, therefore, that the Agreement was not violated.

In reaching the above conclusion, we do not hold that personal illness of a regularly assigned employee constitutes an emergency per se.

AWARD:

Claim denied.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Chairman

/s/ R. J. Woodman
R. J. Woodman, Employee Member

/s/ Chas. N. Faris
Chas. N. Faris, Carrier Member

New York, New York
January 20, 1959