

## SPECIAL BOARD OF ADJUSTMENT NO. 266

## THE ORDER OF RAILROAD TELEGRAPHERS

vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

EMPLOYEES' STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad, that:

(1) Carrier violated the Agreement between the parties when it improperly used Towerman R. E. Moore off his third-shift assignment at East Buffalo Tower to perform vacation relief service on the agent's position at Wayland, New York, during the period July 11 through 29; and

(2) Carrier shall now compensate Claimant Moore for eight (8) hours at the pro-rata rate of his East Buffalo assignment for each day July 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 29, or \$211.56, because he was improperly suspended from his position. And, in addition, Carrier shall compensate Claimant Moore an amount equivalent to the difference between the time and one-half rate, and the straight time allowed him, for services performed at Wayland, New York, on July 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27 and 29 outside the hours of his regular assignment and on the rest days thereof. Total amount due Claimant \$330.23.

OPINION OF BOARD:

Claimant Moore held a regular cycle relief position at Home Station, Buffalo River Drawbridge but immediately prior to the incident giving rise to this dispute he was filling a temporary assignment on a towerman's position at East Buffalo, rate \$1.889 per hour. H. J. Last, a regularly assigned agent-operator at Wayland, New York was assigned a 15 day vacation to be taken from July 11 through July 29, 1955. Claimant Moore left his temporary assignment at East Buffalo Tower on July 10 and began serving vacation relief in the subject agent-operator position at Wayland on July 11. Contention is made that the Carrier violated the Agreement by requiring Claimant Moore to vacate his third shift assignment at East Buffalo Tower in order to perform vacation relief service in the agent-operator position at Wayland from July 11 through July 29.

The Carrier's contention that the assignment of the Claimant to perform this vacation relief was justified as an emergency because no qualified employee was available must be rejected. The rule has been that an employee who has been given a temporary assignment as in the case of Claimant Moore is required to finish this assignment. It is established that there was no qualified employee on the extra board who could have been used to provide vacation relief service in the agent-operator position at Wayland. However, the Carrier could have deferred the vacation of Agent Last or paid him the appropriate amount of compensation in lieu of vacation, in view of the lack of a qualified vacation replacement.

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The evidence discloses that Claimant Moore requested a transfer in order to work in the position at Wayland during the vacation absence of Agent Last. By virtue of this transfer, Moore obtained more pay than he would have received had he remained in his temporary assignment at East Buffalo Tower.

We agree with the Organization's contention that the integrity of the Agreement should be protected and that discouragement should be given to attempts by individual employees to make "private deals" with Management. Under the circumstances involved in this case, however, we are of the opinion that Claimant Moore should not be allowed to benefit from his actions by being awarded the compensation requested in this claim. We therefore conclude that the Agreement was violated in the subject instance but that no additional compensation is due the Claimant.

AWARD:

Part (1) of the claim sustained. Part (2) of the claim denied.

/s/ Lloyd H. Bailer  
Lloyd H. Bailer, Neutral Member

/s/ Dissenting below  
W. I. Christopher, Employee Member

/s/ R. A. Carroll  
R. A. Carroll, Carrier Member


DISSENT

The Employees were fully aware of all the circumstances giving rise to this claim; and the Carrier knew very well that in sanctioning Moore's relief service at Wayland it would be violating the Agreement. The claim was launched for the express purpose of upholding the Agreement. Moore was not the only employe concerned. Every employe under the Agreement had an equity in the claim. Moore, therefore, was simply a representative claimant in behalf of all the employes for whom the Agreement was made.

If agreements are to be effective then penalties must be invoked for their violation. The penalty for violation of the agreement is the important thing, and the particular individual on whose behalf the claim is made is merely incidental.

Here there is no question but that the Carrier violated the Agreement. The award so declares, with which the undersigned agrees. In denying compensation to the claimant the majority completely overlooks the fact that it was the Carrier who violated the Agreement, not Moore. This Board and earlier tribunals have said over and over again that it devolves upon the carrier to properly apply the agreement. Now we have the spectacle of the majority scrupulously bailing out the Carrier from a situation over which the Carrier had absolute control, with little or no thought of the employes constituting the bargaining group.

It was wrong for the Carrier to authorize Moore to perform vacation relief work at Wayland and it is wrong to set aside the penalty for this deliberate act of the Carrier. Two wrongs do not make a right. The majority opines that "Claimant Moore should not be allowed to benefit from his actions by being awarded the compensation requested in this claim." But it finds nothing wrong with allowing the Carrier, who directed the moves, to benefit from its breach of the Agreement. Well, better a bad excuse than none at all. The award, therefore, is nothing less than absolution for the Carrier in spite of the positive finding that the Agreement was violated.

  
W. I. Christopher  
Employe Member