

AWARD NO. 84
CASE NO. 29
Sub 2245-TE-9535
227-2/4-119
(13-57)

SPECIAL BOARD OF ADJUSTMENT NO. 266

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

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 diverted Mrs M. A. Goodman off her regular assigned position, second shift at East Buffalo Yard Office, to fill a temporary vacancy on the first shift position in "V" office, Buffalo, on April 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1956, in the absence of an emergency.
2. Carrier shall now pay M. A. Goodman a day's pay of \$16.848, the daily rate of her position, for each date set forth above, plus a day's pay at the time and one-half rate for the same period during which she was required to work outside the assigned hours of her regular assignment at "V" Office, Buffalo, hourly rate \$3.159, less amount paid. (Bus fare and travel time in connection with this claim has been allowed).

OPINION OF BOARD:

J. A. Hays, Clerk-Operator at "V" Office, Buffalo Passenger Station, with assigned hours of 8:00 A.M. to 5:00 P.M., was scheduled to be on vacation from April 16 through April 27, 1956. Since Hays had been given approval for additional time off for a period immediately following his scheduled vacation, the Carrier bulletined a temporary vacancy in this position. Mrs. M. A. Goodman was declared the successful bidder for this vacancy by bulletin dated April 5, 1956.

Clerk-Operator Hays was off due to illness from March 27 through March 29, 1956 and Extra Operator A. Felich was assigned to perform relief in this assignment. Hays returned to work on March 30. March 31 and April 1, Saturday and Sunday, were his rest days. On Monday, April 2, Hays again reported he was unavailable for duty due to illness. The Carrier then assigned Claimant Goodman to perform relief service on Hays' position. She continued on this assignment until Hays returned to duty on May 7, 1956, when his approved leave period expired. Extra Operator Felich was assigned to work Mrs. Goodman's regular position of Teletype Clerk-Operator at East Buffalo Yard During the time that she was relieving on Hays' position at Buffalo Passenger Station.

Contention is made that the Carrier violated the Agreement by diverting Claimant Goodman from her regularly assigned position at East Buffalo to fill the temporary vacancy created by Hays' absence beginning April 2, 1956. The Organization contends that no emergency existed and that Mrs. Goodman should have been held on her regular position until April 16, 1956, when she was scheduled to begin the bulletined temporary assignment on Hays' Clerk-Operator position at "V" Office. It also is urged that Extra Operator Felich was available and could have been used as relief on this Clerk-Operator position until Claimant Goodman was scheduled to begin her temporary assignment there.

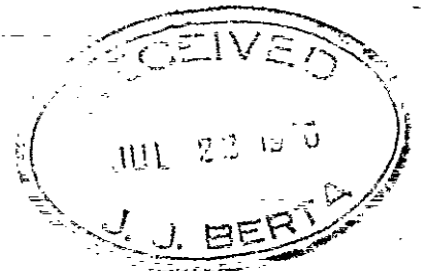
The Carrier responds that the assignment of Extra Operator Felich to relieve on the "V" Office position on March 27 through 29 demonstrated he did not have the qualifications necessary for satisfactory performance of the work involved, since he is not a Morse Operator; that there was no other qualified Morse Operator available; and that the transfer of Mrs. Goodman to the position in question was made necessary due to an emergency. It is agreed that Claimant Goodman is a qualified Morse Operator and that Felich is not.

Having carefully reviewed all of the evidence adduced, we conclude that extra employee Felich did not possess the qualifications required for satisfactory performance of the work involved in the subject Clerk-Operator position; that there was no other extra employee available who possessed the necessary qualifications; and that the Carrier therefore was confronted with an emergency situation. Since Claimant Goodman was transferred from her regularly assigned position as a result of an emergency, it follows that no violation of the Agreement occurred.

AWARD:

Claim denied.

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



Dissenting Below
W. I. Christopher, Employee Member

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

New York, N.Y.
December 3, 1959.

DISSENT

How can we rightfully hold that Felich's lack of qualifications constituted an emergency insofar as the Claimant was concerned? Carrier employed Felich on the extra board. It chose not to assign him to Hays' vacancy on the allegation that he was not qualified. This, then, established the fact that it was Felich's inability to work the job and not Hays' illness that caused the Carrier to switch the assignments. There is no sound logic in a conclusion that forces the Claimant to forego the emoluments of seniority to absorb the shortcomings of another employee. That is the Carrier's burden; here it has been shifted to the Claimant and that is not right. I cannot subscribe to such a doctrine.

/s/ W. I. Christopher
Employee Member