CASE NO.
SYSTEM DOCKET NO. 586
AWARD NO. 53

SPECIAL BOARD OF ADJUSTMENT NO. 310
The Order of Railroad Telegraphers
and
The Pennsylvania Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, that J. M. Everhart, regularly assigned employe, 'D' Relief, is entitled to be paid for eight (8) hours, pro rata rate, for both August 16 and 17, 1958 account of being suspended from performing service on his regular position on these dates - Regulation 4-G-1 governing." (Philadelphia Region, Hbg.Dist. Case No. 164 - System Docket No. 586)

FINDINGS:

Regulation 1-B-1 (d) provides that the senior employee who has filed written application for an advertised position or vacancy shall, subject to the provisions of Regulation 1-A-1,

> "be awarded the position xxx (and) xxx shall be assigned to the position within thirty days after the date upon which the advertisement is closed xxx."

This claimant had been regularly assigned to a permanent relief position, with rest days of Thursday and Friday. He had made application for two positions, one permanent and one temporary, both advertised on July 29, 1958.

Starting Monday, August 11, he accepted a "move up" under the provisions of Regulation 5-C-1, and was assigned to work at State Tower, and he worked on this position Monday through Friday, August 11-15. On the latter date, notice was posted that claimant was awarded the permanent and temporary positions he applied for; and that he was relieved, as of that date - August 15 - from his former regular position.

Claimant elected to move to his new temporary position rather than his new permanent position. This new temporary position had rest days of Saturday and Sunday.

Carrier states that claimant thereby "observed the rest days of the temporary assig nment on Saturday and Sunday. This coincidently coincided with the rest days of the 'move up' position" on which he had just completed 5 days of work, ending Friday. He worked again starting Monday, August 18.

Organization asserts that the Saturday and Sunday in question were assigned work days of the position claimant previously held; that he was available to cover the work in question but was not permitted to cover the work in question despite the fact that Saturday and Sunday were assigned workdays of his old relief position.

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Organization argues that Carrier should have assigned claimant to his new job on the first scheduled workday of the workweek of that position, which would have been Monday, August 18. Carrier reply was to have so acted "would have infringed upon the rights of extra employees and resulted in the possibility of claims, x x x such an arrangement would have continued Mr. Everhart in service more than seven consecutive days."

We must agree with Organization's position here because (1) while Regulation 1-B-1 (d) permits the Carrier to assign applicant at any time within 30 days of the closing of the advertisement; Regulation 5-G-1 (j) fixes the workweek as the week beginning on the first day on which the assignment is bulletined to work; Regulation 4-F-2 (a) protects the Carrier against punitive payments for hours in excess of 40 or days in excess of 5 in any week "where such work is performed by an employee due to moving from one assignment to another" as would be the case here had Carrier acted in the manner now contended for by the Organization.

Carrier argument that the Agreement does not, by specific language, prevent Carrier from starting a man on a position at any time it chooses, while correct in itself, is subject to the permissive modifications of Regulations 5-G-1 (j) and 4-F-2 (a) under the circumstances of this claim. It will be allowed.

AWARD:

Claim sustained.

Signed this 10th day of April, 1961.

s/ E. A. Lynch

E. A. Lynch, Chairman

s/ C. E. Alexander

C. E. Alexander, Carrier Member

s/ R. J. Woodman

R. J. Woodman, Employe Member