

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE.—“F. A. Privett, Extra Telegrapher, for deadhead pay travel time, Fort Collins and Cheyenne, going to and returning from work.”

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon. A hearing was had. The Third Division failed to agree upon an Award because of a deadlock. Paul Samuell was selected as its Referee to sit with the Division as a member thereof and make an Award.

Mr. Privett was extra telegrapher on the Northern Division. He last performed relief service at Loveland, Colorado, being released on April 22, 1921, and deadheaded to his home station at Ft. Collins. On arrival there he requested and obtained a leave of absence for a few days and again reported for duty on April 29, 1931, at which time he requested and obtained transportation to Cheyenne, and upon arrival, displaced a junior extra telegrapher who was performing relief service on second trick and worked there until relieved by the regularly assigned employee. He then elected to deadhead back to his home station, Ft. Collins. His claim for deadheading was not allowed.

The telegrapher's claim is based upon Rule 19 (d) of the Telegraphers' Schedule, which provides as follows:

“(d) Extra telegraphers who have performed initial service, transferred to another position by proper authority, will be paid pro-rata for actual time consumed in deadheading.”

It is contended by the telegraphers that this dispute is similar, so far as interpretation is concerned, to the Hartman case (Award No. 75, Docket TE-70), which in effect holds that under the same rule an extra telegrapher who has been transferred to another position will be paid for actual time consumed in deadheading; that in accordance with the seniority rights of the agreement between carrier and employees, Mr. Privett, as an extra telegrapher, had the right to exercise his seniority and displace junior extra employee, Harris, and that it was the duty of the carrier under the above quoted Rule to compensate Privett for deadheading.

There is a material distinction between the facts in the Hartman case and the one now before us. In the former dispute the employee was *ordered* and sent by proper authority to a certain point to fill a vacancy. In the present case Mr. Privett was not “ordered” or requested by proper authority to Cheyenne, but he merely *elected* to exercise his rights and displace junior employee, Harris. The words “transferred to another position by proper authority” are not idle in meaning. They must be given rational interpretation. To be transferred by proper authority means that some one in authority should either order or request such transfer. In this dispute no one ordered or requested Mr. Privett to transfer, on the contrary, he elected to take over the position under his right of contract, but he was not *compelled* to do so.

This Division is of the opinion that to hold that Mr. Privett is entitled to compensation for deadhead time for work which he elected to take but was not compelled to take, would place a strained construction upon Rule 19 (d), and render the words "transferred to another position by proper authority" meaningless.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 4th day of November 1935.