

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE.—

"Claim of the General Committee of the Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that Extra Telegrapher C. T. Manville be paid for eighty days' lost time account not being permitted to displace a junior extra telegrapher."

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.

The parties have jointly certified the Statement of Facts, and the Division so finds:

"Extra telegrapher C. T. Manville completed service at South Fontana, Los Angeles Division, October 10th, 1933. Did not perform service again until October 17th, 18th, 19th, on which dates he was used in temporary relief service at Oxnard. He returned to Los Angeles headquarters October 20th, 1933. He was permitted to exercise displacement against junior extra telegrapher Beaumont at Calipatria effective October 23rd.

"A junior extra telegrapher, J. H. Shearer, was working at El Centro, October 5th to December 19th, 1933, inclusive."

There is in evidence an agreement between the parties bearing effective date September 1, 1927, and supplementary addenda thereto containing interpretations effective August 1, 1932. This claim is made under Rule 21 (g). The parties also cite Rule 21 (c) and the interpretation of Rule 21 (g) of May 31, 1932, contained in the above-mentioned documents, reading as follows:

RULE 21

"(c) A telegrapher losing his assigned position through no fault of his own, will, if ability is sufficient, be allowed one displacement of either the youngest assigned:

"Group (1) Agent (Not required to telegraph).

"Group (2) Agent (Small non-telegraph).

"Group (3) Agent-telegrapher.

"Group (4) Telegrapher, the greater portion of whose hours are between 8 a. m. and 4 p. m.

"Group (5) Telegrapher, the greater portion of whose hours are between 4 p. m. and 12 midnight.

"Group (6) Telegrapher, the greater portion of whose hours are between 12 midnight and 8 a. m.

provided the telegrapher displaced is his junior in the service. This privilege must be exercised within a period of ten (10) days after loss of assigned position, except as provided for in Rule 20.

"(g) Senior extra telegraphers, when available and competent, will be used in preference to junior extra telegraphers, Senior extra telegraphers, not working, will be allowed to displace either THE junior extra telegrapher on the division, or THE junior extra telegrapher in general, relay, or dispatchers' offices at any time."

INTERPRETATION

"Rule 21 (g).—(1) It is agreed between the Southern Pacific Company (Pacific Lines) and the telegraphers represented by the Order of Railroad Telegraphers that Rule 21 (g) of the current Telegraphers' Agreement shall be interpreted and applied in the following manner, effective June 1, 1932.

"(2) That portion of Rule 21 (g) reading:

"Senior extra telegraphers, not working, will be allowed to displace either THE junior extra telegrapher on the division, or THE junior extra telegrapher in general, relay, or dispatchers' offices at any time,'

shall be interpreted to mean that—senior extra telegraphers, not working who are entitled to make a displacement, shall be allowed to displace either the junior extra telegrapher in any one of the six groups designated in Rule 21 (c) of the current Telegraphers' Agreement on the division, or the junior extra telegrapher in general, relay, or dispatchers' offices at any time.

"For the Company:

"(Signed) R. E. BEACH,

"Supervisor of Wage Schedules,

"Southern Pacific Company (Pacific Lines).

"For the Employees:

"(Signed) N. D. PRITCHETT,

"General Chairman, The Order of Railroad Telegraphers.

"SAN FRANCISCO, CALIF., May 31, 1932."

The Employees contend that the station clerk in the office of Superintendent, Los Angeles Division, gave erroneous information to extra-telegrapher Manville on two occasions, when he inquired as to his displacement privileges, which caused him to lose the time for which payment is claimed. They state that it is the custom for extra unassigned telegraphers to post themselves on their displacement privileges by inquiry of the station clerk in the Division Superintendent's office who, upon such inquiry, displays a list showing the junior employe in each of the six groups mentioned in Rule 21 (c) from which the inquirer may determine what, if any, displacement privileges he has.

They assert that extra telegrapher Manville completed service at Fontana on October 10, 1933, and on the following morning called in person at the Superintendent's office concerning his displacement privileges, and was told there were no junior men working; that on October 16, Manville was assigned to duty at Oxnard, where he worked three days, completing this assignment on October 19; that on October 20 he again inquired of the Superintendent's office concerning his displacement privileges and was told there were no junior men working, whereupon he specifically inquired whether there was not a junior extra telegrapher then working at Calipatria, and was informed that there was a man working at that point against whom he might exercise a displacement privilege—which he did. They further assert that there was an extra telegrapher, junior to Manville, and junior also to the incumbent that Manville displaced at Calipatria, working at El Centro, a group 5 position, on October 11, the date of Manville's first inquiry, and that he continued in that position during the entire period involved in this dispute.

The Carrier contends that there is no dispute between it and the employees with respect to the proper interpretation or application of any rule of the agreement; the only question being one of fact, viz, did Manville on any date between October 10 and 23, 1933, request, and if so was he denied, the right to displace the extra telegrapher, his junior, then working at El Centro?

The Carrier asserts that the custom followed for affording information as to their displacement privileges to extra unassigned telegraphers is not the same on all divisions of the railroad; that on the Los Angeles Division, with which we are concerned here, it is the custom to make inquiry by person, by

telephone, and by telegraph. If the inquirer states that he desires to make a displacement, he is informed of the name and location of the junior extra telegrapher in each group who is subject to displacement by him, but that no record is made of these inquiries unless some action is taken as a consequence thereof.

The carrier further maintains that Manville was given correct information in answer to his inquiries on October 11 and 20, and if he was not informed that junior extra telegraphers were working it was because he did not ask that question.

The Carrier offered in evidence a statement by the station clerk, of whom Manville made the inquiry, in which he says that his practice in handling these matters is uniform and invariable; that he makes up a list each morning of extra-telegraphers subject to displacement and keeps it before him, in order to be prepared to answer inquiries. If the inquirer asks only how he stands on the extra list for employment, that information is supplied; if he asks whether there are any displacements available to him, he is furnished with the name and location of extra telegraphers, his junior, who are working.

The Division further finds that the issue in this case is one of fact: Was Manville furnished erroneous information in response to his inquiries on October 11. (14th?) or 20th. Manville first filed claim in this dispute on November 12, 1933. He then stated that his initial inquiry was made at 9:00 a. m. on October 14. On December 3, he amended the claim, stating that his initial inquiry was made on October 11. The discrepancy in dates is accounted for by the statement that the claim was initiated from Calipatria when his memoranda, which were at his home, were not available. It is not shown whether his inquiry on October 20 was in person or by telephone, but it is shown that he made inquiry several times by telephone during the interval between the two dates.

The station clerk is positive that he furnished such information as Manville asked of him, but bases his assertion upon his invariable custom in handling such inquiries rather than upon distinct recollection of a transaction that took place three months past.

The carrier undertakes to supply information as to employment available to extra unassigned telegraphers, as well as their relative standing on the extra list. Such information should be accurate and readily available to those making inquiry in order that extra men seeking employment may not be deprived of an opportunity for work. It appears that the dispute in this case, as well as similar disputes in the future, might be avoided if inquiries as to displacement rights were made and the replies furnished or confirmed in writing. In this case the evidence is not sufficient to support the claim.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 6th day of May 1936.