

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM.—

"Claim of the General Committee of the Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that in using Telegrapher D. C. McGovern, an extra unassigned telegrapher with seniority rights on the Tucson Division, as wire chief in 'H' Office, a division office, of the Sacramento Division, January 18th, 1934, to February 7th, 1934, inclusive, instead of using a qualified telegrapher who held seniority rights on the Sacramento Division, the carrier violated Rules 2 (c), 9, and 17 (e) and that the Sacramento Division telegraphers who suffered monetary loss by this violation be reimbursed for the amount of loss sustained."

STATEMENT OF FACTS.—The employees submitted ex parte the following statement of facts:

"January 18th to February 7th, inclusive, 1934, Telegrapher McGovern, holding seniority on the Tucson Division, was used on the position of second wire chief, 'H' Office, Sacramento, a division office, thereby permitting the use of second wire chief Stewart as manager—first wire chief relieving manager—first wire chief Baxter, the latter on leave of absence on account of illness and hospitalization."

Carrier's statement of facts was incorporated in the statement of its position as set forth below.

An agreement between the parties bearing effective date of September 1, 1927 (Wage Scale effective May 1, 1927), was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYEES.—The contentions of the employees were submitted as follows:

"Rules 2 (c), 9, and 17 (e) of the agreement are involved in the settlement of this claim:

" 'RULE 2

" 'CLASSIFICATION OF EMPLOYEES, NEW POSITIONS, ETC.

" '(c) Positions covered by this agreement will be filled by telegraphers taken from the telegraphers' official seniority lists.

" 'RULE 9

" 'REGULAR ASSIGNED MEN DOING RELIEF WORK

" 'Regularly assigned telegraphers will not be required to perform relief work, except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation, shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations.

" 'Does not apply when used to relieve local chairman.

ploye in the course of his study to pass test examinations for the purpose of developing his knowledge and thereby enable the Carrier to prepare suitable instructions in the furtherance of the employe's education. This course of instructions and personal assistance is and has been available to the employes of the Sacramento Division for a great many years.

"13. The instant claim is only one of many which have been presented by representatives of the O. R. T., beginning with approximately 1934. As evidenced of what the Carrier has said to representatives of the Order of Railroad Telegraphers and the efforts which the Carrier has put forth to educate and qualify telegraphers for wire chief work, we submit Exhibits 'G-1,' 'H,' and 'I.' In Exhibits 'G-1' and 'I' the Carrier explained to the Petitioner that if Wilson desired to perform the extra unassigned work in 'H' Office, Sacramento, that he should first place himself in the status of an extra unassigned telegrapher; further that if extra unassigned telegraphers desired the work they should and must qualify for it, and that they were not entitled to complain until and unless they were qualified. On several occasions Carrier has informed Petitioner that if the Organization could evolve any plan whereby Wilson could be used to perform the extra work in 'H' Office at Sacramento when there were no qualified extra unassigned telegraphers available on Sacramento Division, without subjecting the Carrier to additional expense, that the Carrier would be glad to consider any such proposal.

"14. Wilson's suggestion that he waive the monetary penalty provisions of Rule 9 if he were permitted to perform the extra unassigned work in 'H' Office at Sacramento, involves only a portion of the additional expense to which the Carrier would be put if Wilson were used, in that it would be necessary to deadhead a telegrapher from headquarters at Sacramento to Ashland, a distance of 342 miles, to relieve Wilson, and then upon Wilson's return to Ashland to relieve the extra unassigned telegrapher, to deadhead said extra telegrapher back to Sacramento, all of which would cost the Carrier not less than two days deadhead pay, whereas in using an extra unassigned qualified employe from 'BD' Office, San Francisco, or one who may be located nearer to Sacramento, the cost of deadheading is reduced by a considerable amount. It should be observed, however, that the General Chairman has not concurred in nor submitted the proposal which the Local Chairman presented and which in so doing went beyond the scope of the authority of the Local Chairman, as reflected by Exhibit 'F.'

"15. Carrier respectfully requests the Board to deny the claim of the Petitioner on the following grounds:

"1st. That Wilson, being a regularly assigned telegrapher, is not entitled to perform extra unassigned work while thus regularly assigned, except in case of emergency, and there was no emergency.

"2nd. That there were no extra unassigned telegraphers holding seniority on the Sacramento Division qualified to perform wire chief work at 'H' Office, Sacramento.

"3rd. That the Carrier did not violate any rule of Telegraphers' current Agreement in using McGovern for the work in question."

OPINION OF BOARD.—The claim as submitted herein alleges violations of Rules 2 (c), 9, and 17 (e) of the agreement.

Rule 2 (c) provides that positions covered by the agreement will be filled by telegraphers taken from the telegraphers' official seniority lists. Since Telegrapher McGovern was admittedly on one of these seniority lists Rule 2 (c) was not in and of itself violated.

Rule 17 (e) provides that seniority rights will be confined to railroad divisions and will not be interchanged between divisions. Although Telegrapher McGovern, holding seniority rights on the Tucson Division, was used to fill a temporary vacancy on the Sacramento Division, his seniority rights were not extended beyond the Tucson Division nor was there any interchange of seniority rights between the Tucson Division and the Sacramento Division. Telegrapher McGovern did not exercise his seniority rights in any way. He was used to fill the temporary vacancy on the Sacramento Division only because no qualified extra unassigned telegrapher on the seniority list of the Sacramento Division was available at the time this vacancy developed. It is established practice, accepted as proper by both parties, to go off the division under such circumstances, and hence Rule 17 (e) was not in and of itself violated.

The essence of the claim is that Rule 9 was violated—that regularly assigned Telegrapher Wilson should have been used to fill the vacancy created by the ill-

ness of First Wire Chief Baxter, either by displacing said Baxter, or, if Second Wire Chief Stewart was used to displace First Wire Chief Baxter, by displacing said Stewart. In either case, it is argued, the place then left vacant by Telegrapher Wilson could have been filled by a qualified extra unassigned telegrapher on the seniority list of the Sacramento Division. How far is this claim of violation supported by the terms of the rule?

Rule 9 reads: "Regularly assigned telegraphers will not be required to perform relief work, except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations." The language of this rule, providing, where regularly assigned telegraphers are required to perform relief work, for reimbursement of loss suffered through a reduction in regular compensation and for allowance of actual necessary expenses while away from regular assigned stations, is not altogether apt as far as the situation here involved is concerned, and there may be considerable question as to whether the circumstances here disclosed constitute one of the cases of emergency contemplated by the rule.

Assuming, however, that this rule is applicable, it appears to be clear that it confers no rights to vacancies upon regularly assigned telegraphers. Its primary intent is to prohibit the carrier from requiring regularly assigned telegraphers to perform relief work; the underlying assumption of the rule is that only extra unassigned telegraphers are entitled as of right to fill such temporary vacancies. It is true that in cases of emergency the prohibition is not binding. But this relaxation of the prohibition merely accords freedom to the carrier in cases of emergency; it does not require the carrier to use regularly assigned telegraphers, nor does it give regularly assigned telegraphers the right to fill these positions.

When the vacancy arose, no extra unassigned telegrapher qualified to fill it was available on either the Sacramento Division or the Tucson Division. The carrier thereupon exercised its right to use a regularly assigned telegrapher, and in using Stewart instead of Wilson it was not only fully within the bounds of its authority, but was in point of fact utilizing the senior of the two employes, in conformity with the general intent of the seniority rules. As to the vacancy created by the transfer of Second Wire Chief Stewart to the position of First Wire Chief Baxter, there being no qualified extra unassigned telegrapher on the Sacramento Division to fill the place, the carrier was entirely within its rights, as we have already seen, in using Telegrapher McGovern, an extra unassigned telegrapher on the Tucson Division who was qualified. It thus appears that although Rule 9 may be applicable to this case, its provisions were not violated in any way.

It is of fundamental importance that the seniority rules of collective agreements be observed carefully and in good faith, but claims based thereon cannot be sustained unless these rules have in fact been violated.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the facts of record disclose no violation of the relevant rules of the operative agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1937.