

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

**THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "It is claimed by the General Committee of The Order of Railroad Telegraphers that: The Chicago, Rock Island and Pacific and Chicago, Rock Island and Gulf Railways violated the Telegraphers' Contract and that Telegrapher E. G. Dorei, having been held off of his regular assigned position as a printer operator in the Des Moines, Iowa, office to relieve a late night wire chief in 'JR' Office, Kansas City, Missouri, who was on leave of absence on account of illness, should be paid \$2.00 per day for each day he was held off of his Des Moines regular assignment and working in Kansas City office, in accordance with Article 19-(f) of the Telegraphers' Agreement."

STATEMENT OF FACTS: The parties have jointly certified the following statement of facts:

"Bulletin No. 565, Relay telegraph division, of October 1, 1936, showed regular printer operator job, Des Moines Office, open for bids; hours of duty to be determined later, at a rate of 63 cents (63c) per hour. Bulletin No. 565 of October 15, 1936, showed assignment to 'be made later.' Bulletin No. 565 of November 2, 1936, showed Telegrapher E. G. Dorei assigned to this job. At the time of assignment to the Des Moines printer operator job, Telegrapher Dorei was filling a temporary vacancy in the Kansas City Relay office on account of illness of the regular incumbent. Mr. Dorei having been assigned to the temporary vacancy at Kansas City on October 28, 1936, and was not transferred to and placed on the printer assignment until January 14, 1937, at which time he requested and was granted a leave of absence, after which he assumed his duties as printer operator in the Des Moines office."

An agreement bearing date of January 1, 1928, is in effect between the parties.

POSITION OF EMPLOYES: "The Order of Railroad Telegraphers has an agreement with the Chicago, Rock Island and Pacific, and the Chicago, Rock Island and Gulf Railway Company, dated January 1, 1928, which is still in effect, 15 copies of which have heretofore been furnished your Board by the Carrier. The Order also has another agreement with the above Railway Company covering what is known as printer machine operators, bearing

far as he was concerned he preferred to remain at Kansas City as long as he could do so, he being under no additional expense there as compared with Des Moines, and to eliminate any penalty being paid by the carrier, under date of December 1, 1936, he addressed H. C. Houtz, Manager-Wire Chief at Kansas City, as follows:

'Per conversation date. Am herewith waiving penalty time account working past the 30 days after assignment my regular job at Des Moines.'

This waiver was for time which could be claimed by Mr. Dorei from December 3, 1936, under Article 19 (g) which reads:

'Pay When Not Transferred Promptly. Telegraphers regularly assigned on bulletin will be paid one dollar (\$1.00) per day after expiration of thirty (30) days if transfer is not made within thirty (30) days from date of assignment.'

"To sustain the employees' claim in this instance, which they base on Article 19 (f), it would be necessary to eliminate entirely Article 19 (g). Had it been intended that Article 19 (f) apply in cases where the employee was not permitted to go on his new assignment when the assignment bulletin was issued, then Article 19 (g) would not have been incorporated in the schedule. These two sections of Article 19 cover entirely different situations, and certainly Article 19 (f) has no application in the instant case. Under different facts—the holding of Mr. Dorei at Kansas City against his will—Article 19 (g) would have been applicable, but the carrier should not be required to now meet the penalty provided under that article, because Mr. Dorei, the employee directly affected, waived the application of that article and requested that he be held at Kansas City."

"Because of the very evident fact that Article 19 (f) does not support the claim of the employees and the waiver signed by Mr. Dorei eliminates the penalty under Article 19 (g), the claim of the organization should be denied."

OPINION OF BOARD: In the case at issue, Telegrapher E. G. Dorei, a Morse telegrapher and a qualified Wire Chief in the employ of the Carrier, had been passed as a qualified printer operator immediately prior to the dates involved in this claim, and as such was assigned to the active extra board at Kansas City, Mo.

On October 1, 1936, bulletin No. 565 listed a regular printer operator position open for bids in the Des Moines office of the carrier. On November 2, 1936, Telegrapher Dorei was assigned to this office by bulletin. Immediately prior to the bulletin assignment of the Des Moines position, or on October 28, Mr. Dorei was assigned to a temporary vacancy as wire chief in the Kansas City relay office of the Carrier, and was not transferred to and placed on the printer operator assignment at Des Moines until January 14, 1937, at which time he was granted a leave of absence to February 1, 1937.

The contention of the General Committee in this claim is that the Carrier violated the terms of the existing agreement between the parties, effective January 1, 1928, in holding Dorei at the work in Kansas City, and away from his regular assignment in Des Moines, without paying him \$2.00 per day for expenses during the time held, or from November 2, 1936, to January 14, 1937, and cite Paragraph (f) of Article 19 of the agreement in support of their contention.

The Carrier contends that in view of Dorei having been continued on extra work at Kansas City after being assigned to work at Des Moines, Paragraph (g) of Article 19 of the agreement would apply, but that the Carrier was exempt from the penalty of that rule by a release from Dorei, dated December 1, 1936, waiving the penalty of \$1.00 per day provided in the rule for such time over 30 days that the employee was held away from his regular assignment.

In connection with the waiving of penalties or making changes in rules contained in schedules and agreements which have been jointly ratified following conference and negotiation between the parties, the Board submits that no such action can be taken except it be through following the same orderly process of conference and negotiation as had preceded the ratification by the parties of the original agreement.

In further connection with the conditions of this instant case, Rule 23 of the agreement between the parties requires that no departure from the rules specified in the agreement shall be made by either of the parties except after 30 days' written notice to the other of such desire.

Under these conditions, the separate agreement between the Carrier and Mr. Dorei, in which Dorei waived the penalty specified in Paragraph (g) of Article 19 of the agreement, is invalid and a violation of the existing agreement between the parties. Beyond this, the Board submits that where an agreement exists between a carrier and the representatives of a collective group, as covered by this claim, any separate agreement made by an individual or individuals affecting any of the rules of the original agreement, is at variance with and a violation of the principles of such agreement.

In connection with the contentions of the General Committee that the Carrier violated the terms of Paragraph (f) of Article 19 of the agreement between the parties, the Board submits that under the terms of that paragraph, and in its proper application and interpretation, Mr. Dorei was a regularly assigned printer operator, coming within the scope rule of the Telegraphers' Agreement of January 1, 1928, in accordance with a supplementary agreement ratified April 1, 1931, and was assigned by bulletin to the office at Des Moines on November 2, 1936; and, in accordance with that rule, should be allowed \$2.00 per day while away from his regularly assigned station through action of the Carrier.

In connection with Paragraph (g) of Article 19 of the agreement between the parties, the Board submits that in its proper interpretation this rule applies to telegraphers regularly assigned on bulletin but whose transfer to such assignment is not made until after the expiration of 30 days from the date of the assignment.

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 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 Carrier violated the terms of the existing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of October, 1937.

DISSENT ON DOCKET TE-543

Dissent is made to the award in this docket because it transgresses the meaning and intent of the rules cited and interpreted. Extra Telegrapher

Dorei, while performing relief work at Kansas City, was assigned November 2, 1936, by bulletin to a regularly assigned position at Des Moines. However, he continued on relief work at Kansas City by permission of the carrier and by request and waiver by Dorei of the penalty provision of Article 19 (g) after the expiration of 30 days from date of assignment to the position at Des Moines.

Under these facts and circumstances this case clearly comes within the language, intent, and purpose of Article 19 (g) without conflict with Article 19 (f) which has no application. By contrast, the award by the referee only serves to give contradiction of meaning to those two rules. Article 19 (g) plainly provides for a telegrapher (whether extra or regularly assigned) an allowable interim of 30 days without penalty payment to him before transfer to his new assignment is required, and this is recognized by the declaration of the referee in the last paragraph of the opinion. Hence, there is no violation of Article 19 (g) or of Article 19 (f) by allowing such an interim in continuance of Dorei on relief work at Kansas City for a period not to exceed thirty days without penalty payment to him; and certainly within such period, though notification by bulletin to all concerned had been made of his assignment to a regularly assigned position at Des Moines, he continued in the status of an extra telegrapher on relief work at Kansas City.

This award, through its complete sustainment of the claim for retroactive pay at \$2.00 per day under Article 19 (f) for the entire period he was held off of the Des Moines assignment (which includes this permissible thirty day interim without penalty) is a declaration contrary to facts above stated and established in the record in this case. To give the award application, it must be assumed that Dorei was a regularly-assigned telegrapher, away from his home station, Des Moines, which he was not, he being in fact and according to Article 19 (g), at least for the thirty-day period, an extra telegrapher on relief work at Kansas City. Whatever designation of position for purpose of correct interpretation of rules may be given in respect to the period following the thirty-day interim without penalty permissible for transfer, it is conclusive that the declaration by this award that Dorei was a regularly-assigned telegrapher under the terms of Article 19 (f) during that permissible thirty-day period and the assessment of penalty retroactive pay therefor constitute a violation of the spirit and intent of that Article 19 (f) as it is confirmed by the pure unambiguous wording and meaning of the immediately following Article 19 (g).

In this instance the employe expressed a desire to remain at Kansas City until the regular employe returned. The carrier, in line with its practice of accommodating the employes whenever possible, acceded to this request. Mr. Dorei made no claim whatever, but the claim was filed by the organization. The carrier is now to be penalized through a new and incorrect interpretation of the rules for accommodating an employe at his own request.

A. H. JONES
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