

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Missouri-Kansas-Texas Lines that, the senior available relief lineman be paid for the time lost to him on the eleven days, August 21 to 31, 1936, when not used on the temporary vacancy in the regular position of division lineman regularly assigned to home station at Parsons, Kansas, held by C. G. Whitley, while Whitley was on leave of absence during that period."

STATEMENT OF FACTS: In their ex parte submission the General Committee stated the facts as follows:

"An agreement bearing date July 1, 1934, as to rules and rates of pay for lineman is in effect between the parties to this dispute.

"C. G. Whitley, division lineman, is regularly assigned to home station at Parsons, Kansas, with definitely assigned territory on which to regularly work.

"D. C. Hudspeth, division lineman, is regularly assigned to home station at Parsons, Kansas, with definitely assigned territory on which to regularly work.

"C. E. Clark, division lineman, is regularly assigned to home station at Sedalia, Missouri, with definitely assigned territory on which to regularly work.

"J. A. Jones, division lineman, is regularly assigned to home station at Muskogee, Oklahoma, with definitely assigned territory on which to regularly work.

"The positions of each of these division lineman are covered by the above mentioned linemen's agreement.

"Division Lineman Whitley was absent on leave from his position Aug. 21 to 31, 1936. The temporary vacancy of eleven days on the position was not filled by a relief lineman. Instead, Division Linemen Hudspeth, Clark and Jones were required by the carrier to overlap on their territories sufficiently to also cover the territory regularly assigned to Whitley. Whitley was not paid for the time absent.

"The Committee claims that the senior available relief lineman, who was not used to fill the temporary vacancy, shall be paid for this time which was lost to him."

The carrier stated the facts as follows:

require filling the position of Division Lineman Whitley during his absence would be setting up a new rule without negotiation as prescribed in the Railway Labor Act.

"The claim of the employees should be denied."

OPINION OF BOARD: In support of their contention in this claim the General Committee of the Order of Railroad Telegraphers submit Article 4 (b) and other articles of the lineman agreement between the parties, effective July 1, 1934, and contend that the senior available relief lineman should have been called to cover the temporary vacancy on a regular position of division lineman created by the temporary absence of the regular lineman, C. G. Whitley, with home station at Parsons, Kansas.

The Carrier contends there is no rule in the agreement which required the Carrier to fill Whitley's position during his absence, and that there were no extra linemen as defined in Article 3 (e) on District 1, and if there were extra linemen on District 2 or 3 they held no seniority rights on District 1; and cite various rules of the agreement between the parties in support of their contention.

According to the evidence submitted C. G. Whitley was regularly assigned to a regular position of Division Lineman, with home station at Parsons, Kansas, and was one of four Division Linemen regularly employed in the same district or on the same division. From August 21 to 31, 1936, Mr. Whitley was absent on leave, but without pay, from his regular assignment, and his duties were assigned during his absence to another or others of the three remaining division linemen.

The temporary vacancy created by Mr. Whitley's absence was not filled by an extra employe and, while four division linemen were assigned to the district or division at issue, the fact is evidenced that during the period indicated only three employes were maintained in the pay of the Carrier.

With reference to the Carrier's contention that there were no extra linemen on District 1, and that extra linemen on District 2 and 3 held no seniority on District 1, the facts are in evidence that there were extra linemen, qualified as Division Linemen available in District 3 and from the evidence submitted the fact is established that when additional linemen were required to fill vacancies on Districts 1 and 2 it was customary and a practice, permitted by the Agreement, to fill such vacancies by the assignment of qualified employes from the extra available seniority lists in District 3.

In further connection with this case the Board submits that extra lists are maintained not alone to fill vacancies established by bulletin, but to as well fill temporary vacancies in established positions with qualified employes whose services have been dispensed with on account of reduction in force or other justifiable causes, and where the service of a qualified employe may be indicated.

From the evidence submitted in this instant case a temporary vacancy did exist in fact among the four regularly assigned division linemen, and in view of the fact that extra qualified linemen were available, that the work of the lineman on District 1 continued to exist, the Board submits that the Carrier was not justified in filling the existing temporary vacancy by the assignment of other regularly employed division linemen from adjoining districts.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Board sustains the contention of the General Committee that the existing temporary vacancy should have been filled by the assignment of a qualified lineman from the extra list of the adjoining or proper districts.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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