

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. De Vane, 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 and
Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "It is claimed by the General Committee of the Order of Railroad Telegraphers that: Extra Telegrapher A. W. Youkey, who was without work and available on October 20, 1936, should have been used to relieve cashier-telegrapher at Duncan, Oklahoma, hours of duty 10:30 A. M. to 6:30 P. M., instead of Telegrapher A. A. Dickens, a junior man, having been called to make this relief. We further claim that inasmuch as Telegrapher Youkey was denied this work by the Rock Island Management running Telegrapher Dickens around him, Youkey should be paid for eight days, October 20 to 27, 1936, both dates included, eight hours per day at seventy (70) cents per hour, and two hours traveling time to Duncan and two hours returning to his headquarters at El Reno, Oklahoma - based on train running time - four hours at the schedule rate of sixty-three (63) cents per hour. Total amount of claim \$47.32."

JOINT STATEMENT OF FACTS: The parties jointly certified to the following Statement of Facts:

"October 19, 1936, regularly assigned cashier-telegrapher J. W. Bayless, Duncan, Oklahoma, hours of duty 10:30 A. M. to 6:30 P. M., transmitted a message at 6:30 P. M. to the Division Superintendent at Fort Worth, Texas, requesting that, on account of illness, he desired relief the next day, October 20, 1936. Extra Telegrapher A. W. Youkey, the senior extra employe available, with headquarters at El Reno, Oklahoma was not called for this assignment on account of the employe in the Superintendent's office responsible for the proper placement of extra telegraphers not having received Telegrapher Bayless' notice until 7:30 A. M., October 20th, and there was no train service from El Reno that could get senior extra Telegrapher Youkey to Duncan in time to protect cashier-telegrapher work starting at 10:30 A. M., the 20th. Therefore, Telegrapher A. A. Dickens, a junior extra telegrapher, with headquarters at Waurika, Oklahoma was notified to protect the Duncan temporary work, although there was no train service that could put Dickens into Duncan in time to protect the assignment at 10:30 A. M., the 20th, and he had to use his automobile to make the trip."

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

ceived at Forth Worth after the Superintendent's Chief Clerk had gone off duty, and Mr. Bayless' request was not made known to the Superintendent's office until 7:30 A. M. October 20. When the Superintendent's Chief Clerk did receive the message at 7:30 A. M. October 20, it was then too late to get the oldest extra man to Duncan for service by 10:30 A. M. that day, and therefore the oldest available extra man was sent to take the position. A. W. Youkey was the senior extra man not working, located at El Reno, Oklahoma, and the extra available man sent to perform the work was A. A. Dickens, who lives at Waurika. Duncan, Oklahoma, is an intermediate station located 75 miles south of El Reno, Oklahoma and 25 miles north of Waurika, Oklahoma. There was no train service available between Waurika and Duncan, nor between El Reno and Duncan, after the need for this Telegrapher developed, which would enable the men to reach Duncan by 10:30 A. M. October 20; but it was known that Extra Operator Dickens had an automobile, and because of the short distance to travel there would be no difficulty in his being able to be at Duncan in time to protect the vacancy at 10:30 A. M. Mr. Youkey also possessed an automobile, but by the time he could have been located at El Reno, prepared for the trip and departed from El Reno, it is possible he would not have been able to reach Duncan in time to protect the assignment at 10:30 A. M. Therefore, the use of the senior available extra man in this case was an emergency brought about by failure of the party desiring relief to give notice to the office handling the telegraphers' extra board at Ft. Worth in sufficient time to send the senior extra telegrapher.

"It is noted the claim made by A. W. Youkey is for a total of \$47.32, which as indicated in the statement of claim covers eight hours per day at 70¢ per hour for eight days, October 20 to 26, both dates inclusive, two hours traveling time to Duncan and two hours returning to headquarters at El Reno.

"The facts in the matter are that J. W. Bayless, who had bid for and had been assigned to the position at Duncan, was found to be incompetent to handle station accounts, an advertised duty of this position. Arrangements had been made on October 17th to relieve Mr. Bayless, the position was bulletin and the Traveling Auditor instructed on October 17th to check the position over to R. E. Hayes, the senior extra man, but who at that time was working as Extra Agent at Hobart, Oklahoma. However, because of Bayless being incompetent, the accounts were checked over to the Agent at Duncan October 18, 1936, and that is the date on which Bayless asked for relief. When R. E. Hayes was checked in on October 22nd, Extra Operator Dickens was relieved, and had Youkey, the extra Telegrapher making the claim in this case, been used instead of Dickens, he would also have been relieved by Hayes on October 22nd; and therefore if there be any claim, which we deny, then it could be only for October 20th and 21st, and certainly there can be no claim for deadhead time to Duncan and return, because deadhead time is paid only when a telegrapher is required to deadhead, and no deadhead trip was made by Mr. Youkey.

"R. E. Hayes has a seniority date as a Telegrapher of August 5, 1921; A. W. Youkey's seniority date is November 2, 1925; and A. A. Dickens seniority date is July 15, 1926.

"The claim of the employees should be denied because an emergency existed, making it necessary to use the first extra operator available, and after Dickens was used in emergency on the position, Mr. Youkey was not sent to Duncan for the two days' work, because it had already been arranged for Mr. Hayes to be checked in."

OPINION OF BOARD: It is shown by the record in this case that telegrapher J. W. Bayless, Duncan, Oklahoma, with hours of duty 10:30 A. M. to 6:30 P. M., transmitted a message on October 19, 1936, at 6:30 P. M. to the Division Superintendent at Fort Worth, Texas, requesting that on account of illness he desired relief the next day. Extra telegrapher A. W. Youkey,

the senior extra employe available, with headquarters at El Reno, Oklahoma, was not called for this assignment and instead telegrapher A. A. Dickens, a junior extra telegrapher, with headquarters at Waurika, Oklahoma, was notified to protect the temporary work at Duncan. El Reno is approximately seventy-five miles from Duncan while Waurika is about thirty miles distant.

Carrier contends that because Bayless' message did not come to the attention of the person responsible for making proper assignments of extra telegraphers until 7:30 A. M., October 20, it was then too late for Youkey to get to Duncan by 10:30 A. M. to protect the assignment.

The record shows that Youkey had been doing relief work for four years and using his car when necessary. The record also shows that there was no train service between 7:30 A. M. and 10:30 A. M. from either El Reno or Waurika to Duncan. There is considerable evidence before the Board as to whether there was sufficient time between 7:30 A. M., when Bayless' message came to the attention of the person responsible for making this assignment, and 10:30 A. M., the starting time of the trick to be protected, for Youkey to get to Duncan by automobile to protect the assignment. However, the Board finds it unnecessary to pass upon this question. The record shows that Bayless' message was received in the office of the Division Superintendent at Fort Worth, Texas, shortly after it was sent on October 19th, more than twelve hours before any action was taken to protect the assignment. No one has suggested that the time intervening between receipt of the message and the starting time of the trick (more than fifteen hours) was not sufficient to have notified Youkey to protect the temporary work. The carrier cannot be excused for its failure to comply with the terms of its contract because Bayless' message did not come to the attention of the person responsible for making the assignment for more than twelve hours after it was received in his office. The responsibility rests with the carrier in such matters where no fault can be charged to the employe.

The carrier also questioned the qualification of Youkey to fill this temporary assignment. It is shown that the incumbent of the cashier-telegrapher position had been disqualified and the position re-bulletined on October 17, two days before he asked relief on account of illness, and that the carrier had made arrangements to have extra telegrapher Hayes assume the duties of the position as soon as he was relieved from the position at Hobart, Okla., which he was temporarily filling. However, Bayless requested relief before Hayes had completed his assignment at Hobart and for that reason Hayes, who was senior to Youkey, was not available for the assignment at Duncan.

The carrier offered no evidence in support of its claim that Youkey was incompetent but relies upon its right to determine ex parte that fact. The Board does not feel that the carrier has such broad powers under the contract. Youkey, as well as Hayes, bid for the position at Duncan, but it went to another who was senior to both of them. There is nothing in the record to show that in the final award of the position anything other than seniority determined the successful bidder. Therefore, the fact that the carrier might have considered Hayes better qualified for the temporary position is not sufficient. Degree of qualification does not control in such matters. Among those qualified seniority is made the controlling factor by the prevailing agreement.

Article 19 (b) of the agreement provides:

"(b) Assignment Extra Men. Extra men will be assigned in turn according to seniority (not to apply to vacancies of less than seven (7) days in relay offices when would necessitate moving men from one office to another.)

"A senior extra telegrapher who has been without work for three (3) days may displace a junior extra telegrapher whose temporary assignment has exceeded seven (7) days, except that extra telegra-

phers relieving agents will only be displaced to protect the requirements of the service. Senior extra telegraphers exercising seniority under this rule will not be compensated for time consumed deadheading."

If Youkey was entitled to this assignment on October 20 under the foregoing rule Hayes would have had no right to displace him prior to October 28, which covers the period of this claim.

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 employe involved in this dispute are respectively carrier and employe 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 action of the Carrier in the instant case was in violation of the terms of the prevailing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of September, 1938.