

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTA AND WEST POINT RAILROAD
THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point Railroad-The Western Railway of Alabama that, G. T. Roland shall be paid one day's pay of eight hours for the day lost to him in transferring from his regularly assigned position of Telegrapher-Clerk at Chehaw, Alabama, to the position of Telegrapher-Clerk at Newnan, Ga., which had been awarded him under the provisions of Article 8-b of the prevailing telegraphers' agreement."

JOINT STATEMENT OF FACTS: "New Position of Clerk-Telegrapher, hours of assignment 9:15 A. M. to 5:15 P. M., was created at Newnan, Ga. and was advertised to all telegraphers, as provided in Article 8 (b) of current schedule agreement.

"G. T. Roland who was regularly assigned as Clerk-Telegrapher on second trick, working from 3:00 P. M. to 11:00 P. M. at Chehaw, Ala., was successful bidder for the new position at Newnan, Ga.

"After Mr. Roland concluded his regular tour of service at Chehaw at 11:00 P. M., March 28, 1937, he was not permitted to assume his newly acquired position at Newnan until 9:15 A. M., March 30, 1937, this causing him to lose one day's pay."

An agreement bearing effective date of November 1, 1923, is in effect between the parties.

POSITION OF EMPLOYES: "In the initial handling of this claim with the Management the Committee has based its contention upon two rules of the current agreement, viz:

'ARTICLE NO. 18

An employe transferred by the direction of the railroad will be furnished free transportation for himself, family and effects, and will be allowed regular pay (except when being moved at his own request) while in transit and making such transfer, rate of pay to be based on the position from which transfer is made.'

'ARTICLE NO. 5

(a) Regularly assigned employes covered by this agreement will be guaranteed a minimum of eight (8) consecutive hours within each 24 hour period, except Sundays.'

and the carrier states that the proviso 'EXCEPT WHEN BEING MOVED AT HIS OWN REQUEST' was written into Article 18 for the express purpose of excepting against payments for time lost by employees transferring in the exercise of seniority where the loss of time was by reason of factors other than failure of the carrier to afford prompt transfer of accounts, thus causing delay in release from position being vacated or in assumption of duties on position to which transfer was being made. In this case there was no audit transfer involved and the time lost by the employees was by reason of no fault of the railroad.

"In this case it is shown—

"1. That the new position as clerk-telegrapher was established at Newnan, Ga. to work daily from 9:15 A. M. to 5:15 P. M.

"2. That the new position at Newnan, Ga. was advertised by bulletin in accordance with Article 8 of the agreement with telegraphers, and to give all employees in service an opportunity to exercise their seniority prerogative to claim the job if they desired.

"3. That G. T. Roland, a telegrapher employed on regular assignment, working from 3:00 P. M. to 11:00 P. M. at Chehaw, Ala., filed a bid, or request, that he be placed on the new job at Newnan.

"4. That when all bids were in and tabulated Mr. Roland was found to be the senior applicant, was so notified and was permitted to exercise his seniority to place himself on the new job at Newnan.

"5. That under restrictions in the 'Hours of Service Law' (Federal) a telegrapher, going off duty on one assignment is not permitted to take up or perform service on another assignment until after fifteen hours have elapsed.

"6. That after going off duty at Chehaw at 11:00 P. M., March 28, 1937, when he vacated his position at Chehaw, Mr. Roland was estopped, under the restrictions in the 'Hours of Service Law' (Federal) from taking up, or starting service on the job at Newnan at 9:15 A. M., March 29th, 1937, because the elapsed time between 11:00 P. M., March 28th, and 9:15 A. M., March 29th, was less than fifteen hours, and it was therefore necessary that he postpone commencement of work on the assignment at Newnan until the following day, March 30, 1937. As a consequence he lost one day, March 29, 1937.

"Contention of the claimant, as known to the Carrier, is that current agreement between the railroads and their telegraphers, in Articles 8 and 18 thereof provides for payment to telegraphers for all time lost when transferring from one position to another in the exercise of seniority and the carrier, having shown that Article 18 specifically excepts against such payments, the Carrier submits that claim as made is without sound basis and can not be sustained.

AND FURTHER:

"The Carrier reserves the right to answer any further or other matters advanced by petitioners (telegraphers) in relation to the issues in this case, either as advanced by said petitioners in their statement of position, to be set forth in this joint submission, which said statement of position of employees this Carrier has had no opportunity to review, or as otherwise advanced, whether written or oral."

OPINION OF BOARD: According to the joint statement of facts, a new position of clerk-telegrapher—hours of assignment from 9:15 A. M. to 5:15 P. M.—was created at Newnan, Georgia, and was advertised to all telegraphers as provided in Article 8 (b) of the current schedule agreement. G. T. Roland, regularly assigned as clerk-telegrapher on second trick,

worked from 3:00 P. M. to 11:00 P. M. at Chehaw, Alabama. He was the successful bidder for the new position at Newnan, Georgia. The claim is based on Article No. 18 and Article No. 5 of the current agreement, hereinabove set forth.

As was suggested at the hearing, the decision in this case will depend upon the interpretation of Article 18. If Roland was transferred at his own request, Article 5 (a) would have no application and the claim would fail.

When the new position at Newnan, Georgia, was advertised or bulletined, G. T. Roland made application for it and was successful by reason of his seniority standing.

When notified of his selection, on March 27, 1937, he wired W. H. Cooper, the chief dispatcher: "Your wire date. Will go to Newnan Monday duty Tuesday." (Signed G. T. Roland.)

We believe the application for the new position and the ready response when notified of his selection justify the Board in holding that the transfer was made at Mr. Roland's own request. Indeed, we think no other reasonable inference can be drawn. The change enabled him to work from 9:15 A. M. to 5:15 P. M. when he had been working 8:00 P. M. to 11:00 P. M.

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, approved June 21, 1934;

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

That no violation of the agreement is shown as G. T. Roland made application for the new position and was transferred at his own request.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1939.