Award No. 1786
Docket No. TE-1759

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Alton Railroad Company, that Telegrapher R. W. McGrath is entitled to eight (8) hours' pay for September 3rd, 1939, on account of being held for service and not used.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing the date February 16th, 1929, as to rules and August 1st, 1937, as to rates of pay, is in effect between the parties to this dispute.

Telegrapher McGrath was instructed to work September 1st and 2nd as Agent at Elkhart, and September 3rd as First Trick Operator at Athol Tower. He worked at Elkhart September 1st and 2nd. After being released at Elkhart he traveled to Lincoln (Athol) and after arriving at Lincoln (Athol) he was advised that he would not be used.

CARRIER'S STATEMENT OF FACTS: R. W. McGrath, extra telegrapher, was instructed on August 30th, 1939, to protect a two day vacancy at Elkhart, Illinois, on September 1st and 2nd, and a one day vacancy at Athol, Illinois, on September 3rd. On September 2nd Extra Operator Davis, senior to Operator McGrath, reported for duty after laying off, and being the oldest available telegrapher was entitled to fill the vacancy at Athol on September 3rd. Operator McGrath after going off duty at Elkhart at 4:00 P. M., September 2nd, went to Lincoln, twelve miles distant, at which point he was notified at 4:45 P. M. that a senior man would fill the vacancy at Athol on the following day. According to agreement the Carrier was obliged to use the senior man on the vacancy and notified Operator McGrath of his displacement as soon as possible.

POSITION OF EMPLOYES: On August 30, 1939, extra telegrapher R. W. McGrath was instructed by proper authority to work as agent at Elkhart on September 1st and 2nd, 1939, and on September 3rd, 1939, as first trick telegrapher at Athol Tower. These instructions were given him at one and the same time.

McGrath worked at Elkhart on September 1st and 2nd as directed, and upon finishing the assigned work at Elkhart on September 2nd, left there for Athol (Lincoln) at about 4:18 P. M., as a revenue paying passenger on the Illinois Terminal Railroad, there being no other means of transportation that would enable him to reach Athol, a suburb of Lincoln, in time to commence work on the first trick operator position on the following morning at 7:00 A. M.

McGrath lived at Springfield, Ill., and there was no possible means of transportation that would have allowed him to return to his home at Spring-

tion of the case covered by Award No. 1247, the previous claim referred to was paid because of all of the facts present in that case and more particularly because the Carrier's information was to the effect that the claimant had not received notification until he actually reported for duty on the assignment. In that case the records indicated some possibility as to lack of diligence on the part of the Carrier in failing to get notice to the employe before reporting for duty and primarily this influenced the Carrier in paying the claim. When this claim was paid it was not stated or intended to be used as a precedent or to serve as interpreting any rule or agreement. It was simply the disposition of a claim on its individual merits based upon the circumstances existing in the case and no evidence was or can be produced to indicate that it was intended by the Company to serve as a precedent or an interpretation of any rule or agreement. It was exactly of the character of cases referred to in that part of the findings of your Board in Award No. 274, Docket No. TE-278, quoted hereunder:

> "Cases are likely to arise under labor agreements which can only be handled on their individual merits, and when so handled should not be regarded as creating precedents for subsequent cases or as changing the agreement in question."

This same principle is again restated by your Board in Award No. 1533 under the "Opinion of Board." This is sound, logical reasoning in that it encourages settlements of disputes and claims on the individual properties without imposing upon either side the serious penalties that may arise because of a concession made by either party to dispose of a particular dispute being later construed by another tribunal as interpreting a rule or establishing a precedent for all time thereafter which was never contemplated or intended in the disposition of the particular dispute. Unless there is specific language used in the settlement of such individual cases which plainly indicates that such settlements would serve as interpreting the rule or agreement, it is mere and unwarranted presumption to hold that a mutual interpretation has been established.

This Carrier understands that principles enunciated by your Board such as stated in Awards Nos. 274 and 1533, hereinbefore referred to, are promulgated for the use and guidance of carriers and employes in settling disputes in which such principles may be applicable. Upon that basis the Carrier maintains that this claim should be resolved solely upon the basis of governing rules, which the Carrier believes it has clearly shown were not violated.

The Carrier has shown that the claimant in this case was not held for service at Athol on September 3rd, 1939, and was not entitled to the work; that, on the contrary, the Carrier was obliged by its agreement with Employes to use Operator Davis to fill the temporary one-day vacancy at that point. Therefore, the claim of the Employes is without merit and should be declined.

OPINION OF BOARD: This docket must be resolved upon the meaning of the term "catching temporary vacancy" as that term is used in Rule 8 of the agreement. We, of course, must confine our construction of the term to the facts disclosed by the record. Therefore, without attempting to give any general definition of the term we simply hold, the facts so showing, that where, as here, an extra telegrapher is assigned to a temporary vacancy, and the carrier has the opportunity of notifying the employe that such assignment is cancelled before the employe goes to the office where the vacancy has occurred, but the carrier fails to avail itself of such opportunity, and sends the notice of cancellation only to the office at which the employe is to report for work, that as between the carrier and the employe the employe has caught the temporary vacancy within the meaning of Rule 8, and should be paid accordingly.

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 record discloses a violation of Rule 8 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1942