

Award No. 1787
Docket No. TE-1760

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 H. C. Lewis is entitled to eight (8) hours' pay for June 4, 1940, on account of being held for service and not used.

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

Telegrapher H. C. Lewis was regularly assigned to the third trick telegrapher's position at Venice Junction commencing June 3, 1940, displacing Telegrapher Kuehner on account of reduction in force, and he worked the position on June 3, 1940.

At 1:55 P. M., on June 4, 1940, the following telegram was sent to Venice Yard Office:

"Bloomington 4

H. C. Lewis

Later, Nickum will displace Kuehner on 3rd Venice commencing tonight.

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1:55 P.M."

Which telegram was not delivered to Venice Junction office until some time after 5:00 P. M. by messenger and it was not received by Telegrapher Lewis until he reported for duty at 11:45 P. M.

CARRIER'S STATEMENT OF FACTS: Operator H. C. Lewis was regularly assigned to third trick at Venice Junction, Illinois. Operator E. W. Nickum was regularly assigned relief swing man. Part of his assignment was cancelled, reducing the assignment to less than six days a week, and he notified the chief dispatcher on Tuesday, June 4th, of his intention to displace Operator Lewis on the third trick at Venice Junction that night. The chief dispatcher sent telegram to Operator Lewis at Venice telegraph office at 1:45 P. M., that date, advising him that he was being displaced that night by Operator Nickum. The operator at Venice, which is the regular office where all telegrams are sent, was unable to locate Mr. Lewis and when office was closed at 5:00 P. M. he sent message to Venice Junction block office. Operator at Venice Junction could not locate Mr. Lewis and he was not notified until he reported for duty on the 11:00 P. M. trick that night. He was not allowed to work account Operator Nickum having reported for the job.

The claim of the Employees is not supported by schedule rules, is without merit and should be denied.

OPINION OF BOARD: This docket presents a question somewhat similar to the question presented in Docket TE-1759. However, the facts here disclose a claim for a day's pay on account of being held for service on a regular assignment and there is no question of "catching" a temporary vacancy. Rule 8 of the agreement is, therefore, not here involved.

Employees rely upon the rule in the agreement of August 3, 1934 which provides, "Regular assigned employees will receive one day's pay within each twenty-four (24) hours, * * * if ready for service and not used * * *." We are convinced that where a regular assigned employee is displaced some obligation rests upon the Carrier, under this rule, to notify the displaced employee; otherwise, the rule would be of no effect.

The further question presented is the scope and extent of this obligation to notify which is placed upon the Carrier under the rule. The rules contain no requirement as to kind or type of notice necessary, but, under the rule, some notice being necessary, we are of the opinion that the notice or attempt to notify must be that which is reasonable under all the facts and circumstances disclosed in each particular instance.

The facts are set forth at length in the record and it is unnecessary to restate them here. The record fairly discloses that Lewis never in fact received notice of his displacement until he reported for service on his regular assignment. The Carrier sets forth the attempts it made to notify Lewis of his displacement, but in view of the undisputed fact that a message addressed to Lewis at the office of his regular assignment at the time the message was sent to Venice would have been effective in getting notice to Lewis we are constrained to hold that the attempted notification was not reasonable under the facts appearing of record.

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 employee involved in this dispute are respectively carrier and employee 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 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.