

Award No. 2130
Docket No. TE-2089

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Carrier violated the agreement in effect in discontinuing position numbered 632, Los Angeles Union Passenger Terminal, Los Angeles, Calif., November 3rd, 1940; that Telegrapher J. H. Meadows, the occupant of this position at the time it was abolished, be restored thereto and be compensated for all monetary loss sustained, and that all other telegraphers who have been displaced or otherwise adversely affected because of the violative action of the Carrier be restored to their respective positions, if removed therefrom, and in all cases be compensated for any and all monetary loss sustained by them.

EMPLOYES' STATEMENT OF FACTS: Effective 4:00 P. M., November 2nd, 1940, position No. 632, Los Angeles Union Passenger Terminal Telegraph Office, was discontinued. It was not the last position established in that office.

The positions occupied by Southern Pacific Telegraphers in the Telegraph Office of the Los Angeles Union Passenger Terminal were established in the following order:

First established No. 634, starting time 12:01 A. M.
Second established No. 632, starting time 8:00 A. M.
Third established No. 633, starting time 4:00 P. M.

The office was opened on May 6th, 1939.

POSITION OF EMPLOYEES: There is in effect an agreement between the parties to this dispute and this agreement is on file with this Board.

A Supplemental Agreement covering the operation of the telegraph office and tower located within the territorial limits of the Los Angeles Union Passenger Terminal, executed April 12, 1939, is also effective and is on file with this Board.

EXHIBITS "A" to "L" inclusive are made a part of this submission.

The dispute is prosecuted under Rule 21 (e) of the Southern Pacific contract—

"RULE 21

**"Reduction Of Forces And
Displacement Rights**

"(e) In reducing the number of positions at stations except as provided for in Rule 20, paragraph (f), last position established shall

allotted to employees of the Southern Pacific Company by the agreement (Exhibit "A") of May 7, 1939, are concerned, position No. 632, occupied by Telegrapher Meadows (both, when initially established on May 6, 1939, and when it was abolished on November 3, 1940,) was the last position in the office to be established.

The time sheet (Exhibit "I") further shows that position No. 633, occupied by Telegrapher Ray Riggs, was established on May 5 and could not have possibly been the last position in the office to be established as contended by the petitioner.

Agreement rule 21 (e) specifically provides that in reducing the number of positions, the last position established shall be abolished first.

The carrier had no alternative but to abolish position No. 632, held by Telegrapher Meadows, when a reduction in the number of positions was considered advisable on November 3, 1940.

CONCLUSION

As the carrier has conclusively shown that the alleged claim is wholly without merit and totally lacking in agreement support, the Board is requested to deny the claim in every particular.

OPINION OF BOARD: The dispute in this case concerns the right of the Carrier to discontinue the position of the claimant on November 3, 1940 at the Los Angeles Union Passenger Terminal. The rule in question, 21 (e), reads as follows:

"(e) In reducing the number of positions at stations except as provided for in Rule 20, paragraph (f), last position established shall be abolished first, and hours of remaining trick or tricks changed to cover the required number of hours that the office is to remain open."

There is no disagreement as to the interpretation of the rule nor as to the right of the Carrier to discontinue one of the positions involved.

We are concerned with three positions established at the Terminal in May of 1939, No. 632 held by the claimant with hours from 8 A. M. to 4 P. M., No. 633 held by Riggs with hours from 4 P. M. to 12 midnight, and No. 634 held by Fuller with hours from 12 midnight to 8 A. M. The sole question before us is one of fact as to which position was the last established and should under the terms of the rule have been the one to be discontinued. The Committee contends that the positions were established in the following order:

- 1—No. 634 held by Fuller
- 2—No. 632 held by Meadows, the claimant
- 3—No. 633 held by Riggs

The Carrier claims that thy were established in the following sequence:

- 1—No. 633 held by Riggs
- 2—No. 634 held by Fuller
- 3—No. 632 held by Meadows, the claimant.

In determining the issue of fact which is now before this Board we can do no more than review the evidence in the record in support of the claim of each side, and decide in whose favor it preponderates. There is one point about which there is no dispute,—that Meadows commenced work at 8 A. M. on May 6, 1939. But the Carrier contends that Riggs and Fuller started work May 5 at their assigned times. Whether they did or not, or whether at least Riggs did, is the crux of the controversy.

The Committee calls attention to the fact that Fuller and Riggs were each paid for a dead day on May 5th while transferring from one position to another and that payment for a dead day is regarded as having been made for

the positions which they had left. This contention receives some support from a telegram from Riggs to Mr. Pritchard, the General Chairman, dated November 13, 1940. This is to the effect that the last time worked on his previous job was from May 4th, 8 P. M. to May 5, 4 A. M. He then says: "This necessitated my losing one day May 5th in order to be ready to go to work at LAUPT at 4 P. M. May 6th. I was paid for the dead day May 5th by LAUPT. I recall that Fuller was required to be there one day in advance, so presume he was paid for a dead day also." This is the strongest evidence that there is in the record that Riggs did not start work until 4 P. M. May 6th. At the same time in analyzing this, especially in connection with a seemingly contradictory affidavit by Riggs of a later date, it appears that his assertion that May 5th was a dead day and that he did not start work until May 6th is not necessarily inconsistent with the contention of the Carrier that these men were ordered to report for work or at least for some preliminary instruction at their new jobs on May 5th. By referring to a "dead day" it is we think apparent that Riggs was not using these words in the technical sense that it was a day on which he was still on his old job though not working, but rather in the sense that he did not on that day get into the full swing of his new position. This interpretation of his language is we think justified by the last sentence: "I recall that Fuller was required to be there one day in advance, so presume he was paid for a dead day also." This would seem to bear out the Carrier's contention that Fuller and Riggs were ordered to report to their new positions on May 5th for certain preliminary work and instruction. As a matter of fact the terminal did not formally open until May 7th. The Committee also minimizes the importance of the time sheet, which shows that Riggs and Fuller were paid for eight hours on May 5th. It is claimed that these positions cannot be regarded as having been established on that date because, it is contended, they were not really worked on the time assigned to them. Fuller's time, it is said, was from 12:01 A. M. to 8 A. M. and it is apparent from the time sheet that he was not relieved at 8 A. M. on May 5th. The hours from 8 A. M. to 4 P. M., when he would ordinarily be relieved by Meadows, were blanked. This, it is said, indicates that the positions were not really established until Fuller came on duty at 12:01 A. M. on May 6th and was succeeded by Meadows at 8 A. M., who was in turn succeeded by Riggs at 4 P. M. of the same day. It is also said that there was no transfer book in operation until May 7th. We think that all of this evidence does no more than show that the work of these three positions had not, certainly prior to May 7th, been fully organized. It does not, in the light of the affirmative evidence adduced by the Carrier negative the Carrier's contention that Riggs and Fuller were ordered to report on May 5th and did in fact report on that date and did some work. One other suggestion of the Committee should perhaps be considered. They argue that Riggs did not start work as claimed at 4 P. M. on May 5th because to do so would have been a violation of the Federal Hours of Service Act, because of the fact that he left his previous position at 4 A. M. that same morning. The Carrier points out, however, that during the time that these men worked on May 5th and 6th the act did not apply because no train operations were taking place. But even if the Carrier's contention with respect to the non-applicability of the law were not correct, this would not be decisive in determining whether Riggs actually worked on May 5th.

Against this evidence the Carrier calls attention to the time sheet of the Santa Fe Railroad which shows the time for which men were paid who were employed by the various railroads using the terminal. This shows that Riggs and Fuller were paid for eight hours on May 5th at the rate called for by the new positions and that Meadow's pay did not start until May 6th when he was paid for eight hours work at the rate called for by the new position. Then there are affidavits by both Riggs and Fuller that they were instructed to report at the terminal on May 5th and that they did report on that date and did certain work for which they were paid the regular rate of pay.

We are in accord with the contention of the Committee that "A position is not established through the payment of a dead day." For the reasons given, however, we do not think that payment was made in this instance for a dead day as these words are technically used. We hold that Riggs and Fuller did report for work on May 5th in accordance with the Carrier's instructions and did work and were paid for it, and that Meadows reported and started work on May 6th. As Meadow's position was the last established it was the first which should have been abolished.

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 employes involved in this dispute are respectively carrier and employes 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 Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.