

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway Company that

(a) The Carrier violated the provisions of the Telegraphers' Agreement when on completion of his tour of duty June 26, 1941, Telegrapher E. E. Huycke was removed from a telegraph schedule position at Amarillo, Texas, to which he had been assigned in accordance with the rules of the Agreement and which was then on bulletin, and required to protect a vacancy at Wellington, Kansas, and

(b) In consequence thereof said Telegrapher Huycke is entitled to and shall be paid actual living and traveling expense incurred June 27 to July 3, 1941, inclusive.

EMPLOYES' STATEMENT OF FACTS: Copies of an agreement between the parties to this dispute, bearing an effective date of December 1, 1938, are on file with the National Railroad Adjustment Board.

The telephone position in the Amarillo office, as listed at page 56 of the Telegraphers' Agreement, became vacant. While in the process of filling said position by bulletin, telegrapher E. E. Huycke as the senior available extra board employe was assigned thereto, beginning June 14, 1941 and continued thereon to and including June 26, 1941.

Effective June 27, 1941, Huycke was required or permitted to vacate the Amarillo telephone vacancy, having been sent to Wellington, a travel distance of 313 miles, to protect a vacancy at the latter location. Mr. Huycke remained on the Wellington vacancy to and including July 16, 1941, at which time he proceeded to La Junta to occupy a position bid in by and assigned to him as of July 3, 1941.

Mr. Huycke was relieved from the telephone position by Miss Haynie, who was regularly assigned to a PBX position covered by the Clerk's Agreement, and who has seniority thereunder. Miss Haynie returned to her regular PBX position July 4, 1941.

POSITION OF EMPLOYES: As indicated by the Organization's Statement of Facts, the telephone position (not switchboard) at Amarillo became vacant on or about June 14, 1941 due to the employe previously assigned thereto having been assigned by bid to a printer-clerk position in the same office. Mr. E. E. Huycke the then senior extra board employe stood to catch and

Only regularly assigned employees who are required to perform relief work away from their regular assigned stations and whose regular compensation may be thereby reduced are entitled to the benefits of Article 10 (a). Extra employees are specifically excepted, as per section (c) of that Article. Huycke was not a regularly assigned employee having a regularly assigned station or regular compensation. He was an extra man while working as telephoner at Amarillo, and an extra man when sent to and working at Wellington.

On the facts, the claim must be denied.

OPINION OF BOARD: This claim was filed on behalf of E. E. Huycke for living and traveling expenses from June 27 to July 3, 1941, the claim being based on Article X (a) and on Article XXI (i-1) of the current agreement.

On June 14, 1941, Huycke, as the senior available extra board employee, was assigned to fill a temporary vacancy at Amarillo, Texas. On June 27, 1941, before the temporary assignment at Amarillo was finished, he was assigned to and did fill a temporary position at Wellington, Kansas, where he remained until July 16, 1941, when he proceeded to a permanent position which he had bid in and which was assigned to him July 3, 1941.

The first rule on which the claim is predicated, Article X (a), provides as follows:

"(a) Regularly assigned employees will not be required to perform relief work except in cases of emergency, but when required to perform relief work and in consequence thereof suffer a reduction in their regular compensation they shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations."

Paragraph (c) of this article expressly provides:

"This Article does not apply to extra men."

To permit a recovery under this section we must hold that while Huycke was filling the temporary vacancy at Amarillo, he was not an "extra man," but was, for the time being, a "regularly assigned employee" within the meaning of this Article of the Agreement. We do not believe such a construction was intended by the parties when making this Agreement.

Under the Agreement between these parties effective February 5, 1924, this Article was entitled "Extra Work for Regular Men," plainly indicating that the parties had in mind taking men from their regular or permanent positions. The text of the body of this Article remains practically the same in the present Agreement, and we must assume that the parties in this Article of the present Agreement were talking about the same class of employees as in the 1924 Agreement.

The statement that this Article shall not apply to "extra men" is also significant, so significant that it would seem to preclude acceptance of the construction urged by the organization. Both parties agree that unassigned extra men, when called to fill a temporary vacancy, are not entitled to expenses such as are here claimed. If we do not construe paragraph (c) of this Article as excluding extra men while temporarily assigned from the benefits of paragraph (c), then paragraph (c) has no meaning and must be regarded as surplusage.

The language of Rule XXI (i-1) also throws light on the proper construction to be given to this Article. Rule XXI (i-1) provides that "one extra employee will not be permitted to displace another extra employee on an unfinished assignment." (Our emphasis.) This language indicates rather clearly that an extra man while temporarily assigned to fill a vacancy is still considered an "extra man."

It is on this sentence in Rule XXI (i-1) that petitioners seem to predicate their second theory for this claim. They contend that by Huycke being transferred to Wellington before the temporary assignment at Amarillo was finished the carrier violated this Rule of the Agreement and for that reason is liable for claimant's living and traveling expense.

On the first page of its submission (Page 3 of the record), the organization states that "Huycke was required or permitted to vacate the Amarillo telephone vacancy." If the Carrier only "permitted" him to make the transfer he certainly would be in no position to now claim damages against the Carrier for his doing something which the Carrier only "permitted."

The purpose of this Rule would seem to be only for the protection of an employe once assigned to a position being displaced by a senior employe becoming available before the assignment is finished. The Rule first provides that "senior employes on the extra list, if available, will be given the preference" on extra work, but then proceeds to limit this rule by the provision here in question "but one extra employe will not be permitted to displace another extra employe on an unfinished assignment." (Our emphasis.)

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 no violation of the Agreement is shown by the record.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1943.