

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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, Southern Pacific Company, Pacific Lines, that, because he was not placed back on his regularly assigned position of fifth telegrapher at Indio, California, within thirty days subsequent to its reestablishment on May 26, 1942, after having been abolished on May 14, 1942, Telegrapher R. D. Luckenbill be compensated for the difference in rate of pay between the position of fifth telegrapher at Indio and the position of agent-telegrapher at Thermal, and that he also be reimbursed for living expenses and automobile mileage at the rate of 5¢ a mile, such additional compensation and reimbursement covering the period, June 26 to July 23, 1942, inclusive.

EMPLOYEES' STATEMENT OF FACTS: May 1, 1942, Circular A-11211 advertised for bid, position of 5th Telegrapher, Indio. As provided in Rule 19 (c), Telegraphers' Agreement, employees were given 10 days in which to file application for same. R. D. Luckenbill was assigned to this position.

On May 16, 1942, position of 5th Telegrapher, Indio was abolished and Telegrapher Luckenbill filed a displacement under Rule 21 (c), Telegraphers' Agreement.

On May 24, 1942, Telegrapher Luckenbill was notified that position of 5th Telegrapher, Indio was to be reestablished and he was asked if he would like to return to his assignment at Indio. Telegrapher Luckenbill made application in writing to return to his assignment at Indio, as provided by the rules of the Telegraphers' Agreement.

POSITION OF EMPLOYEES: There is an agreement in effect between the parties to this dispute and a copy of that agreement is on file with this Board. These rules have both a general and specific application to this claim. Any rule that has a connection with, defines, explains, or clarifies terms used herein, may hereafter be cited.

The claim is covered more specifically by Rules 9, 19 (c), and that certain Memorandum of Understanding dated February 26, 1932, all of which are quoted for ready reference—

"RULE 9.

Regular Assigned Men Doing Relief Work

Regularly assigned telegraphers will not be required to perform relief work, except in cases of emergency and when required to per-

OPINION OF BOARD: The essential facts of this case can best be stated chronologically:

May 11, 1942, the claimant was assigned by bulletin to the position of Fifth Telegrapher at Indio, California; rate .96 per hour.

May 14, 1942, said position was abolished.

May 15, 1942, the Carrier was advised by the claimant that he desired to displace the Agent-Telegrapher at Thermal, California.

May 16, 1942, claimant was released at Indio.

May 18, 1942, claimant assumed duties as Agent-Telegrapher at Thermal; rate .8625 per hour.

May 23, 1942, Carrier advised claimant that position of Fifth Telegrapher at Indio would be re-established and asked him if he desired to return thereto.

May 25, 1942, claimant advised Carrier that he did desire to return to the Indio position.

May 26, 1942, position at Indio re-established.

July 11, 1942, claimant bid in position of Second Telegrapher at Banning, California; rate .885 per hour.

July 23, 1942, claimant released at Thermal.

July 28, 1942, claimant began service as Second Telegrapher at Banning.

The claim is for the difference in rates between the Indio and Thermal positions (.96 and .8625 per hour) from June 26 to July 23, 1943; also, for reimbursement for automobile expense, 35 miles per day at five cents per mile, for the same period, account no eating or sleeping accommodations at Thermal.

The situation appears to be covered by the effective Memorandum of Understanding dated February 26, 1932, Section (2) of which reads:

"If a position which has been abolished is re-established within thirty (30) calendar days (not including the day on which abolished), the telegrapher who was regularly assigned to the position on the day it was abolished, may return to the re-established position and be considered as assigned thereto."

The Carrier says, however, that Section (2) of said Memorandum is ineffectual to sustain the claim because the rule fixes no time within which an employe coming within its terms shall be transferred to a re-established position, and because it carries no penalty; also, that the claim was cut off when, on July 11, the claimant bid in the position at Banning. With neither of the above contentions can we agree. Award No. 2263 is authority for the proposition that where the Agreement fixes no specific time within which a transfer to a position shall be made, the assigned employe must be transferred promptly, or within a reasonable time. Thirty days cannot be considered an unreasonably short time, under the circumstances of this case. Said Award further states:

"Where an employe sustains a loss by reason of a violation of the Agreement by the Carrier, he must be compensated for such loss, even though no specific penalty is imposed by the rule violated. Where no specific penalty is named, the employe must be made whole."

With reference to the second contention, we are of the opinion that the Carrier's violation of Section (2) of the Memorandum created a continuing liability that could only be terminated by compliance with its contractual

obligation, or by the claimant's effective abandonment of his claim for further redress. The claimant did not abandon his right to re-assume the position at Indio until he accepted the one at Banning. The fact that he bid in the latter position on July 11th does not require that he suffer a subsequent financial loss, solely occasioned by the Carrier's breach of the Memorandum of Understanding.

Inasmuch as the Carrier has not disputed the items of expense incurred by the claimant in filling the position at Thermal, the claim will be sustained in its entirety.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.