

Award No. 2984

Docket No. TE-2889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna and Western Railroad Company that:

1. The Carrier violated Rule 17-(a) of the Telegraphers' Agreement when it refused to permit senior extra Towerman Hilton S. Covey to displace junior extra Towerman F. McCormick from a temporary vacancy at Bridge-60, effective 7:30 A.M., May 2, 1944, and
2. In consequence thereof the Carrier shall be required to pay to said Hilton S. Covey one day's pay at Bridge-60 rate for the day's work denied him on that date, May 2, 1944.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

At 7:30 A.M., May 1, 1944, extra Towerman Hilton S. Covey was released from a temporary vacancy of less than 30 days at Bridge-60, assigned hours 11:30 P.M. to 7:30 A.M., due to the return to duty of regularly assigned Towerman P. Ruane.

Extra Towerman F. McCormick, who is junior to Covey, at the time Covey was released, was protecting a temporary vacancy of less than 30 days at Bridge-60, assigned hours 7:30 A.M. to 3:30 P.M.

Having been advised of Ruane's return to duty, beginning 11:30 P.M., May 1, Covey notified Assistant Chief Train Dispatcher Davies at or about 6:00 P.M., April 30th, that he would exercise seniority right by displacing F. McCormick, effective 7:30 A.M., May 2. Mr. Davies notified all concerned accordingly.

At or about 3:15 P.M., May 1, Chief Train Dispatcher O'Boyle telephoned Covey at the latter's residence informing him that the displacement could not be made until 7:30 A.M., May 3. Covey, therefore, lost one day's wage (May 2) at Bridge-60 rate, or \$8.32.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, Hilton S. Covey completed a **temporary vacancy**, assigned hours 11:30 P.M. to 7:30 A.M., at Bridge-60, 7:30 A.M., May 1, 1944. Pursuant to the provisions of the first part of the second paragraph of Rule 17-(a), reading "Incumbents of temporary vacancies may be displaced by a senior incumbent of a temporary vacancy that has terminated" Mr. Covey declared to Assistant Chief Train Dispatcher Davies at or about 6:00 P.M. April 30, his intention to displace F. McCormick, who was his junior and who was occupying a

that for the reason it was not definitely known the exact number of days the First Trick position would be vacated, the action taken by the Chief Dispatcher in placing F. McCormick on the job was strictly in accordance with the Telegraphers' Rule—No. 18.

Further when it became known that M. Slocum, who held down the First Trick, Bridge 60, position was to be used in the Chief Dispatcher's office as an extra dispatcher beyond the three day period, Hilton S. Covey was placed immediately on the First Trick Position at Bridge 60 tower on May 3rd, 1944.

This dispute has been progressed to the National Railroad Adjustment Board by the Telegraphers' Organization on the theory that the Carrier must know at its peril the exact number of days in each and every case a position will be vacant. Neither the Carrier nor any one else can possibly foretell the number of days one employe may be off his assignment, for sickness or personal reasons. It would do violence to Rule 18 to hold that it requires the Carrier to be an infallible prophet.

The Chief Dispatcher's action is not to be weighed—

"looking back with the wisdom that follows the event."

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The employes have been unable to produce through correspondence or otherwise evidence that the Chief Dispatcher did not act strictly in accordance with schedule rules—with the facts before him at the time of assigning the jobs in question.

It is the position of the Carrier that the temporary vacancy on the First Trick Towerman position at Bridge 60 on May 2nd, 1944, was correctly assigned in accordance with Telegraphers' Schedule Rule 18 and the Carrier requests the Board so to find.

OPINION OF BOARD: The question involved in this matter resolves itself on the interpretation and construction of Rules 17 and 18.

RULE 17—TEMPORARY VACANCIES

"(a) When a position is vacant five (5) days it will be given to the senior qualified applicant. Applicant must make his intention known at least twenty-four (24) hours before starting time.

Incumbents of temporary vacancies may be displaced by a senior incumbent of a temporary vacancy that has terminated, otherwise a senior employe may exercise displacement rights only after each five (5) day period of the temporary vacancy." (Balance of rule not applicable.)

RULE 18—EXTRA EMPLOYES

"A temporary vacancy of three (3) days or less duration will be filled by the senior qualified employe not then employed if available."

In Award No. 2911, it was held by this Board that Rule 17 "applies to both regularly assigned and extra employes." If this rule were the only rule given in reference to temporary vacancies, this claim would be unanswerable by the Carrier. The Contract contains Rule 18 which must be given some application to extra employes and temporary vacancies. Both Rule 17 and 18 are parts of the same governing contract and must be construed together so that the intent and purpose of the parties can be put into effect and so that full meaning is given to each and every part thereof. If Rule 18 is given any meaning as a part of this Contract it must be held to apply to two things and to that extent it limits Rule 17. The two matters to which Rule 18 applies are (a) extra employes and (b) temporary vacancies of three days or less. This rule does not

attempt to determine when an incumbent may be displaced. The only reference to that subject is in paragraph two of Rule 17(a). There it is stated that "Incumbents of temporary vacancies may be displaced by a senior incumbent of a temporary vacancy that has terminated * * *" Since Rule 18 does not limit or attempt to limit the time or method of displacement under the circumstances indicated in the second paragraph of Rule 17 (a), it is necessary to apply that paragraph to the claim under consideration. The Carrier failed to give due consideration to the effect of the applicable part of Rule 17 (a) and denied the Claimant has right under the Agreement to displace a junior extra employee who occupied a temporary vacancy.

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 Employees involved in this dispute are respectively carrier and employees 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 Rule 17 (a) of the Telegraphers' Agreement and should make Claimant Hilton S. Covey whole for the loss of one day's pay.

AWARD

Claim 1 sustained—2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 26th day of November, 1945.