

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, 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 & Western Railroad Company that, in accordance with the provisions of Rule 15(a), L. E. Popeck, regularly assigned to the 2nd trick (4:00 P. M. to 12:00 o'clock Midnight) operator-clerk position at Elmira, New York, Passenger Station, be allowed:

- (a) \$1.00 each day, December 2, 3, 4, 5 and 6, 1943 on which days he was required to vacate his regular position to perform emergency relief work at Elmira Yard;
- (b) Travel time of 15 minutes for each the initial and final trip between the location of regular assignment to the location of the emergency relief assignment; and
- (c) Eight hours' pay at the rate of his regular assignment December 1, 1943, a day he was required to lose account transferring from Elmira Passenger Station (4:00 P. M. to 12:00 o'clock Midnight) to Elmira Yard (12:00 o'clock Midnight to 8:00 A. M.)

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

L. E. Popeck, regularly assigned operator-clerk, 4:00 P. M. to 12 o'clock Midnight, at Elmira Passenger Station, who occupied that position November 30, 1943, was required, effective December 2, 1943, to perform emergency relief work at Elmira Yard 12 o'clock Midnight to 8:00 A. M., and continued thereat to and including December 6, 1943; he was notified and did return to his regular position at Elmira Passenger Station 4:00 P. M. December 7, 1943.

Mr. Popeck lost one day's pay December 1, 1943 account of the transfer from a 4:00 P. M. to 12 o'clock Midnight position to a 12 o'clock Midnight to 8:00 A. M. position.

The Telegraphers' Agreement hereinbefore referred to lists at page 24:

Elmira Passenger Station	First Trick	74¢ per hour
	Second Trick	70¢ per hour
	Third Trick	70¢ per hour
Elmira Yard	First Trick	71¢ per hour
	Second Trick	74¢ per hour
	Third Trick	74¢ per hour

Rule 22 reads as follows:

"Employees may be permitted to change positions temporarily not to exceed ninety days in any one calendar year but in all cases the approval of the superintendent and the local chairman will be required.

Popeck worked Elmira Tower December 1, 2, 3, 5 and 6

The Local Chairman approved as well as the Superintendent

It is understood that such changes will in no case result in causing additional expense to the Company."

To sustain the claim would obviously cause "additional expense to the Company."

It will be noted that Rule 22 is a specific rule, and specific rules control over general rules.

In regard to Item (c), Claim of Employees, the Statement of Facts clearly shows L. E. Popeck lost no time on December 1, 1943 as claimed.

Carrier contends claim should be denied for the following reasons:

- (1) Rule 15 (a) has no application in view of agreement between Superintendent White and Local Chairman West—Rule 22 governs.
- (2) The claimant L. E. Popeck lost no time on December 1, 1943.
- (3) Popeck had no extraordinary cost of personal maintenance and sustained no travel expenses under the facts of this case (See Award 2604).
- (4) Award 2843 is not controlling since "precedents must always be weighed in the light of the facts." (See Award 2670). Moreover, The Board should reconsider and over-rule its decision in Award 2843, which was erroneous. There should be no hesitation about over-ruling an erroneous decision. (See Award 9673—First Division).
- (5) There is no proof that the Organization was authorized by the employe to handle the purported claim on the property.
- (6) There is no proof that the employe authorized the Organization to take the purported claim to the Board.
- (7) There is no proof that the employe was given notice of hearing by the Board, that he waived such notice, and waived appearance at said Hearing.
- (8) The Board lacks jurisdiction to make a legal and binding Award unless the conditions specified in points 5, 6 and 7 are satisfied.

E. J. & E. v. Burley,
U. S. Supreme Court
#160—October Term 1944
Decided June 11, 1945

OPINION OF BOARD: This is a claim for eight hours pay, travel time, and \$1.00 a day for each day December 2 to 6, 1943, on account of Claimant being required to vacate his regular position to perform emergency relief work at Elmira Yard. Although eight hours pay claimed to have been lost is stated in (c) of the claim to be on December 1, 1943, a joint check of the parties indicates that it was on November 30, 1943.

Rules 15 (a) and 23 are applicable here and read as follows:

"Rule 15 (a)—Employees holding temporary or regular assignments will not be required to do relief work except in case of

emergency. When they are required to do relief work at any office other than the one to which assigned, they will be paid the rates of the position they fill, but not less than their regular rates and shall be paid straight time on the minute basis at the rate of the higher paid position while traveling to and from temporary assignment, in no case to exceed (8) hours pay. In addition to this they shall be reimbursed for any time lost in making the change, also receive one dollar (\$1.00) per day for expenses."

"Rule 23—Regularly assigned employees will receive one day's pay within each twenty-four (24) hour period according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays."

Carrier's contention that Organization agreed that employee might be used at Elmira Tower is not sustained by the record. Further, we do not agree with Carrier that because the place where the relief work was performed was in the same city as was the station where employee held his regular assignment, that employee is not entitled to travel time or the \$1.00 allowance. There is nothing in Rule 15 (a) indicating that its provisions are not to apply when the relief assignment is in the same city. As we have previously stated, the \$1.00 per day is an arbitrary allowance, regardless of the actual expenses incurred in any one case. Awards 2604 and 2843 are controlling here.

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 Carrier violated Agreement.

AWARD

Claim sustained with the correction as to (c) of the claim, changing the day from December 1, 1943 to November 30, 1943.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1946.