

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the general committee of the Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana that C. W. Plummer be reimbursed for difference in compensation earned and what he would have received had he been properly assigned to temporary vacancy as agent at Freeport, Texas.

EMPLOYES' STATEMENT OF FACTS: Bulletin No. 93—September 12, 1943, advertised a temporary vacancy in position of agent at Freeport, Texas.

C. W. Plummer was the senior applicant and received the assignment. He was not placed on the position and suffered a loss in his railroad and express earnings.

POSITION OF EMPLOYES: A history of the case is best determined by an examination of correspondence exchanged between the representative of the organization and Carrier, we quote:

"San Antonio, Texas
April 21, 1944

Mr. F. H. Cook, Supt.,
Mo. Pac. Lines,
Palestine, Texas.

Dear Sir:

Bulletin No. 93 of Sept. 12, 1943 was issued on temporary position agent Freeport and was bid in by agent-telegrapher C. W. Plummer.

This man was never allowed to go to this position and Agent Reed returned on December 1st, 1943.

Ten days are allowed to fill a temporary vacancy which expired on Sept. 22nd and Mr. Plummer is due the difference in rate of pay at Freeport and the position he held on, at Kilgore together with necessary actual expenses and express commission from Sept. 23rd to Nov. 30th (both inclusive) 1943.

Will you please arrange to settle this claim advising.

Yours truly,

J. M. Bruce,
General Chairman."

missions ever been taken into consideration by the Carrier in the application of Paragraph (e) of Rule 3. In explanation of the Carrier's inability to relieve Mr. Plummer on his position of telegrapher at Kilgore to permit him to take the temporary position of agent at Freeport, it has been stated that at this time, as a matter of fact, prior and subsequent to the time of this claim, there was a general shortage of personnel arising from the National Emergency and particularly was there a shortage of trained and competent telegraphers capable of handling train orders, selling tickets, and billing freight. In support of this statement, attention is directed to the fact that the records show that during the period of this claim there was a shortage on this particular division of eight agents and telegraphers; two stations were closed for several days account no relief telegraphers available to man the stations; and that during the months of October and November, 1943, there were thirty-two instances where it was necessary for telegraphers to double (work two shifts) account no relief telegraphers available. Under these conditions it was not, as previously stated, possible for the Carrier to relieve Mr. Plummer as telegrapher at Kilgore to take the position of agent at Freeport bid in by him under Bulletin No. 93 dated September 12, 1943.

When consideration is given to the above and to the following additional facts:

1. Paragraph (e), Rule 3, on which the Employees' claim is based, does not provide either specifically or otherwise for the inclusion of express commissions in determining the degree of penalty accruing to the Carrier under the circumstances existing in this case, and in the absence of any specific provision of Paragraph (e) for the inclusion of express commissions in the application thereof it cannot properly be assumed that such inclusion is implied therein;
2. Paragraph (e), the governing rule, specifically provides that under these circumstances Employee "shall be paid at the rate of position bid in".
3. The rate of the position of telegrapher at Kilgore, occupied by Mr. Plummer during the period in question, was 83 cents an hour, 8 hours per day, 365 days per year, with overtime at time and one-half rate for service performed in excess of 8 hours; and that on this position during the period in question he received compensation in the amount of \$473.10; that the rate of the position of agent at Freeport was \$196.26 per month to cover all services rendered, and on this basis the compensation received on that position during the period in question was \$444.86, or \$28.24 less than that received by Mr. Plummer at Kilgore;
4. Express commissions have never been included in applying the penalty provisions of Rule 3, Paragraph (e);

it is clearly evident that there is no basis under the governing provisions of the agreement between the Carrier and The Order of Railroad Telegraphers for the contention and claim of the Employees in this case, and therefore the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: The facts in this claim are not in dispute and are fully stated by the parties. They will not be repeated.

The real question for our determination is whether Claimant is entitled to Railway Express Agency compensation for the period of time he was assigned under bulletin to the temporary vacancy as Agent at Freeport, Texas, but was prevented from filling this assignment by the Carrier.

Rule 3 (e) and (h), and Rule 26 are the principal rules involved in this dispute.

While there is no penalty specifically provided by Rule 3 (h) in connection with failure to transfer an Employee from his regular position to a temporary vacancy, yet in this record the Carrier has conceded the application of the principles of Rule 3 (e) to such temporary vacancy situations by the allowance of a penalty after 10 days' failure instead of 30 days' failure as comprehended by Rule 3 (e). The pertinent part of Rule 3 (e) reads:

"When an employee bids in a vacancy and is not placed within thirty (30) days he shall be paid at the rate of position bid in and resulting necessary expenses for each day held from newly assigned position, in excess of thirty (30) days after position is bulletined."

The Carrier contends that the phrase, "at the rate of position bid in," does not mean all compensation that is paid the holder of the position. In other words, the Carrier contends that the Railway Express Agency commission is not a part of "the rate of position bid in," and since the Claimant's compensation received by him while working at Kilgore during this period was in excess of the rate of pay of the position Claimant bid in at Freeport, this claim should be denied.

The Employees contend that if Claimant had worked under his assignment he would have received the Railway Express Agency commission; therefore, under Rule 3 (e) and (h) and Rule 26 the claim should be sustained in amount of the Express commission for the period in dispute.

Rule 26 reads:

"(a) When express or commercial telegraph commissions are discontinued at any office, thereby reducing the average monthly compensation paid to any position, prompt adjustment of the salary affected will be made conforming to rates paid for similar positions.

"(b) Employees will not be required to serve the Railway Express Agency at a less rate of compensation than is now being paid. Complaints by employees against the Railway Express Agency will be handled through their General Committee, and the Management of the Carrier will handle complaints with the Railway Express Agency.

"(c) Complaints by employees concerning the commercial telegraph company will be handled through their General Committee and the Management will handle such complaints with the telegraph company for adjustment."

The Telegraphers' Agreement, dated January 1, 1928, lists the position of Agent at Freeport at a monthly rate of \$200.00 a month. Under that Agreement the Agent received no compensation for handling Express business, but under the Telegraphers' Agreement effective March 1, 1930, the rate of the position of Agent at Freeport was \$150.00 per month but under this Agreement the Agent received Express commissions.

We, therefore, hold that the compensation for handling Express business at Freeport is considered as a part of "the rate of the position," and the claim must be sustained. See Awards 528 and 1321.

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 employee involved in this dispute are respectively carrier and employee 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 as contended by the Petitioner

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1947.