

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION  
Grady Lewis, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS  
GREAT NORTHERN RAILWAY COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Great Northern Railway Company.

That because of being improperly denied the position of Telegrapher from July 9, 1946 to August 4, 1946, at Great Falls, Montana, as per his application of May 14, 1946, for which he was senior qualified applicant, Telegrapher R. W. Sell shall be reimbursed for expenses incurred by him while improperly held away from Great Falls and that he be paid the difference between what he earned during the period he was improperly denied the position and what he would have earned had he been properly assigned as set forth below:

- |  |          |
|--|----------|
| (a) July 9, 1946 to August 4, 1946, twenty-six (26) days' room at Havre at \$1.50 per day, total.....  | \$ 39.00 |
| (b) Total amount paid for meals at Havre, Mont., July 9, 1946 to August 4, 1946, inclusive .. \$66.60 .. less \$13.33, which represents the amount of board which it would have cost Operator Sell at Great Falls, which is his home and where his grocery bill is \$40.00 per month for the three persons of his household, one-third of the cost being charged to Operator Sell, leaving a net out-of-pocket expense for meals ..... | 53.27    |
| (c) Difference between \$244.29 actually earned at Havre, July 9, 1946 to August 4, 1946, inclusive, and \$312.04, the amount which would have been earned by Operator Sell had he been assigned to the position of his choice at Great Falls during this same period of time.....   | 67.75    |
| Total amount claimed .....   | \$160.02 |

**JOINT STATEMENT OF FACTS:** Prior to April 26, 1946, R. W. Sell was regularly assigned to a position of Relay Telegrapher in the Great Falls, Montana, Relay Office, with assigned hours 10:00 A. M. to 6:00 P. M.

On April 26, 1946, the Superintendent of Telegraph, Mr. R. C. Thayer, issued the following wire bulletin to all Relay Managers:

"Bulletin Third Trick Wire Chief's position Willmar, rate \$1.26 per hour. Bulletin to close April 29, Applications should be filed in accordance with Article V of Telegraphers Schedule. Copy all Relay Managers. C-23."

Fourth: There is no rule in the Telegraphers' Agreement which, in any way, provides for or infers that a payment such as is claimed by the employes herein is justified.

Fifth: There is only one rule in the agreement with The Order of Railroad Telegraphers which in any way may be held to provide for a payment when a regularly assigned employe is held from his assignment to perform other service and payment in accordance with the provisions of that rule, namely, \$1.00 per day for each day held from his regular assignment, has been offered by the Carrier and rejected by the employe.

Sixth: That there is no such rule in the Telegraphers' Agreement at the present time is verified by the fact that the employes have now proposed a revision of Article XII (a) which, if agreed to, would provide the payment being asked by them in this case without the benefit of a supporting rule. The proposed rule has been quoted heretofore.

Seventh: There is an equal obligation upon the Carrier and the employes to police the provisions of agreements to which they are parties, and the employes must be held at least equally responsible with the Carrier for their failure to protest what was later admitted to be a technical violation of the intent of Article V(e), and while there can be no question but that no one other than the signatories to an agreement have any right to modify or place formal interpretation upon rules which would result in a modification of them, it is equally true that the Division Chairman of the organization must be held to be just as responsible for the proper application of the rules in that Division as is the Superintendent of Telegraph who is responsible for their application from the standpoint of the Carrier.

The Carrier, therefore, holds that its offer to allow Mr. Sell \$1.00 per day in accordance with the provision of Article XII(a) constitutes the utmost to which he is entitled under any rule of the Telegraphers' Agreement, and that for your Board to hold otherwise would be in fact for you to write a rule into the agreement which the employes are now trying to secure through due process of negotiation.

**OPINION OF BOARD:** The record deals in great length with the present meaning and past construction placed upon Article V-(e) and Note by the parties to the Agreement. Whatever has been said of that Article in the past, or whatever may be said of it in the future is not material here. The parties have agreed in the Joint Statement of Facts that the Note to that Article, in this case, means "positions" and not "Office." Such interpretation being agreed upon, the facts are clear that Claimant was not attempting to bid back into an immediately preceding vacated position. This is true since the position at Great Falls last held by Mr. Sell was for the assigned hours of 10:00 a. m. to 6:00 p. m., whereas the assignment bid for by him was from 5:00 p. m. to 1:00 a. m.

Claimant was within his rights in demanding recognition of his bid for the Great Falls Assignment. The fact that the Local Chairman, through mistake of fact, agreed, at one time, with Carrier's contention in no way lessened Sell's right to the assignment.

By reason of Carrier's violation of the Agreement, Claimant was not only prevented from earning additional money in wages, but he was also put to needless living expense while in Havre. Under authority of Award 2263, and Awards therein cited, the claim for compensation for such losses is valid.

**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 parties waived oral hearing thereon;

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 Agreement was violated as complained of.

AWARD

Claim sustained:

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1947.