

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad, that C. E. Smith, regularly assigned agent-operator at Clayville, N. Y., effective April 25, 1945, but who was required to perform relief work on the position of second trick operator-clerk at Oswego, N. Y., April 26 through May 14, 1945, shall be paid the arbitrary amount of \$1.00 per day for expenses for each of these days as stipulated by Article 15(a) of the telegraphers' agreement, and reimbursed for the difference between the lesser rate of the operator-clerk position at Oswego and the higher rate of the agent-operator position at Clayville and for travel time on the initial and final trip between these two points as further provided by Article 15(a) of said agreement.

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.

As of April 12, 1945, Mr. C. E. Smith regularly occupied the position of second trick clerk-operator at Oswego, rate of pay 86c an hour. Carrier's Bulletin No. S-740 dated April 12, 1945, advertised to employees covered by the telegraphers' agreement, for a ten-day period in accordance with the provisions of Rule 16(c), the agent-operator position at Clayville, rate of pay 95c an hour. Mr. C. E. Smith, in whose behalf this claim is made, was the senior applicant for the Clayville position and in accordance with the provisions of Rule 16(c) of the telegraphers' agreement was assigned thereto and notification to that effect was contained in Carrier's Bulletin No. S-743 dated April 25, 1945.

Mr. Smith was not permitted to occupy his position at Clayville until May 15, 1945; instead he was required to perform relief work at Oswego, April 26 to May 14, 1945, both dates inclusive.

Claims in behalf of Mr. Smith for application of the provisions of Rule 15(a) were properly lodged with the Carrier, but they were denied.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, on or prior to April 12, 1945, Mr. C. E. Smith owned and occupied the second trick clerk-operator position at Oswego, rate of pay 86c an hour. Due to the death of the former incumbent, a permanent vacancy occurred in the agent-operator position at Clayville, rate of pay 95c an hour, causing the Carrier to issue Bulletin No. S-740 April 12, 1945 which advertised to employees covered by the telegraphers' agreement for a period of 10 days, in accordance

OPINION OF BOARD: By Bulletin S-743, dated April 25, 1945 Claimant C. E. Smith was assigned to the position of agent-operator at Clayville. Following this assignment Claimant was retained on his old position at Oswego until May 15, 1945, and paid the rate of the Oswego position. Smith is here claiming the difference in the Oswego rate and the rate of the position to which he was assigned on April 25, also travel time and expenses under the provisions of Rule 15(a).

The first question to be determined is whether Smith is entitled to the higher rate following his assignment to Clayville. Under a rule somewhat similar to Rule 16(c) of this Agreement this Board held that an assignment to a position does not carry with it the right to immediate transfer to it. Award 2174. However, this Carrier, as disclosed by Awards 2843 and 3228, had been paying the higher rate immediately after assignment, thereby recognizing that the assignment to a position carried with it the right to immediate transfer to the new position and the emoluments pertaining to it. We think the Carrier has placed its own construction on Rule 16(c), that it is bound by such construction, and cannot now in the case of Smith seek a different application of the Rule.

Smith, having the right to immediate transfer to Clayville, was entitled to pay for travel time and expenses under Rule 15(a) while held at Oswego. Award 2604, 2843, 3134 and 3228.

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 has 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 17th day of July, 1947.