

Award No. 3633

Docket No. TE-3613

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that B. L. Major, assigned to position of third telegrapher, Los Angeles Yard, Los Angeles Division, be paid \$146.00 expenses, February 12th to April 25th, 1943, inclusive, account held off assigned position and required to work as agent-telegrapher at Palm Springs, Los Angeles Division.

EMPLOYES' STATEMENT OF FACTS: Claimant B. L. Major was working as extra agent-telegrapher at Palm Springs, California, Los Angeles Division. He was assigned by Carrier's circular A-11608, dated January 11th, 1943, to the position of third telegrapher at Los Angeles Yard. He was not permitted to assume his assigned position until April 26th, 1943, being required by the Carrier to work as agent-telegrapher at Palm Springs to and including April 25th, 1943.

Claimant Major presented expense account for \$146.00 for the period February 12th to April 25th, inclusive, 1943, plus the difference in rate of pay between the agent's position at Palm Springs and his assigned position of third telegrapher, Los Angeles Yard.

Carrier paid the difference in the rate of pay, but declined the claim for expenses.

POSITION OF EMPLOYES: The claim is presented under Rules 9 and 19 (c) of the Telegraphers' Agreement dated September 1st, 1927.

Exhibits "A" to "L" inclusive are shown as a part of this brief.

"RULE 9.

**Regular Assigned Men Doing
Relief Work**

Regularly assigned telegraphers will not be required to perform relief work, except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations.

"Does not apply when used to relieve local chairman."

This rule clearly state telegraphers will not be required to perform relief work except in emergency cases and if they are required to perform such relief work they shall be paid at the rate of their assigned position, plus actual necessary expenses.

Rule 19 (c) covers completely the matter of placing a successful applicant on the awarded position and the penalty in the event he is not placed thereon. Said rule cannot be tied into or coupled with any other rule of the agreement for the purpose of obtaining more payment than is provided for in said Rule 19 (c). In this respect the petitioner's position is fallacious.

The claimant did not become the regular assigned occupant of the position of third telegrapher-clerk, Los Angeles Yard, until he actually placed himself on said position. This occurred on April 25, 1943; therefore until April 25, 1943, Rule 9 had no application to the claimant insofar as being taken from his regular assignment to be used to perform relief work. Prior to April 25, 1943, the claimant had the status of an extra telegrapher notwithstanding the fact that he was awarded the position of third telegrapher-clerk, Los Angeles Yard, on January 11, 1943.

The inconsistency of the petitioner's contention that Rule 9 provides for expenses for a successful applicant who is not placed on awarded position within thirty days is conclusively demonstrated by the fact that subsequent to the period involved in this dispute the petitioner negotiated with the Carrier a memorandum of agreement, effective October 2, 1944 (Exhibit B), changing Rule 19 (c) to read as follows:

"A successful applicant shall be placed on his newly assigned position within thirty (30) days from the date of the assignment notice, or be compensated thereafter on the basis of the established rate of either that position or the position on which he works, whichever rate is the greater, plus an expense allowance of two dollars (\$2.00) per calendar day."

Particular attention is directed to the fact that amended Rule 19 (c), effective October 2, 1944, provides for an expense allowance, whereas Rule 19 (c) in effect during the period of the instant dispute had no such provision.

Obviously the petitioner would not have negotiated a memorandum of agreement changing Rule 19 (c) to provide for expenses to be allowed successful applicants not placed on newly assigned positions within thirty days if the said allowances were already required by another rule of the agreement, and the inescapable conclusion is that the said memorandum of agreement was negotiated by the petitioner in realization of the fact that neither the language nor the intent of Rule 9 supports the contention that under the said rule an expense allowance is payable to successful applicants not placed on newly assigned positions within thirty days.

For the division to sustain the instant claim would be tantamount to holding that the said memorandum of agreement shall be applied to the period prior to October 2, 1944, notwithstanding the specific provision thereof that the "agreement shall be effective Monday, October 2, 1944."

CONCLUSION

The Carrier asserts that it has conclusively established that the claim in this docket is without basis, and therefore respectfully submits that it should be denied.

OPINION OF BOARD: Claimant was occupying the position of agent-telegrapher at Palm Springs, California, when he was awarded, after advertising, the third telegrapher-clerk position in Los Angeles Yard, Los Angeles, California, January 11, 1943. He was not relieved at Palm Springs so that he might proceed to his new assignment until April 25, 1943.

Rule 19 (c) of the agreement required that the claimant be placed on the bid-in position within thirty days from the date of the assignment. Since this was not done, Carrier paid claimant the amount of compensation he was entitled to on the assigned position, the exaction fixed by said rule.

Claimant now asks for actual expenses aggregating \$2.00 per day for the period from February 12 to April 25 inclusive, 1943.

He relies upon Rule 9 of the agreement to support his claim. That rule deals with regularly assigned men doing relief work. It reads:

"RULE 9.

**REGULAR ASSIGNED MEN DOING
RELIEF WORK.**

"Regularly assigned telegraphers will not be required to perform relief work, except in cases of emergency, and when required to perform relief work, and in consequence thereof suffer a reduction in the regular compensation, shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed actual necessary expenses while away from their regular assigned stations.

"Does not apply when used to relieve local chairman."

We cannot agree that Rule 9 is applicable. Rule 19 of the agreement deals comprehensively, through seven subdivisions, concerning qualifications for and bulletining of vacancies. Paragraph (c) thereof provides a fixed and specific penalty for failure to place the successful bidder on his assignment. Where the agreement fixes one penalty this Board may not add an additional nor different one.

Moreover, the fact that claim presents no bill for the thirty days next following the assignment is a tacit admission that Rule 19 (c) applies rather than Rule 9. Since if claimant was doing relief work after the assignment for any period of the time he remained away from his assignment he was doing it all the time, the first thirty days included.

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 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 Rule 19 (c) applies and it has been fully complied with by Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.