

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA AND 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

1. Miss H. P. McCormick, regularly assigned third trick clerk-operator, Apulia, N. Y., be compensated at time and one-half rate of her regular position for each hour she performed service as agent-operator at Tully, N. Y., outside of her regular assignment at Apulia, May 29 through June 10, 1944, plus straight time rate for each hour she was suspended from her regular position during the same period of time, and to include the day she lost making transfer between the positions, less the compensation previously allowed for these days, and

2. Mr. A. A. Natoli, not then holding a regular position, be compensated at time and one-half rate of the Tully agent-operator position for each hour he performed service as clerk-operator at Apulia outside of the assignment at Tully, and straight time rate for each hour he was suspended from the agent-operator position at Tully, May 29 through June 10, 1944, less the compensation previously allowed for these days.

EMPLOYES' 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.

At page 28 of the aforementioned agreement (Telegraphers' Agreement) the following positions, with rates of pay, are listed:

"Apulia: Agent-Operator	.70½ per hour.
Clerk-Operator, Second Trick	.68 " "
Clerk-Operator, Third Trick	.68 " "
"Tully: Agent-Operator	.75 per hour."

The National wage increases of 1941 and 1943 increased each of these rates by 19c an hour.

May 29 and continuing through June 10, 1944 (12 working days), Mr. M. J. Dempsey, the regular agent-operator at Tully, was on vacation under the provisions of the National Vacation Agreement of 1941. Mr. A. A. Natoli, an available and qualified extra board employe, was instructed by the Carrier to protect the Tully vacancy; however, these instructions were later cancelled by others which required or permitted him to protect, for the same duration,

(5) There is no proof that the employes involved were given notice of hearing by the Board, that they waived such notice, and the Board lacks jurisdiction to make a legal and binding award.

U. S. Supreme Court 325 US 711

(6) The action of Local Chairman Chadwick in making no claim until the last day of the vacation period of Agent Dempsey with full knowledge of the facts estops the Organization from making the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute results from an arrangement made by two employes regarding vacation relief. The arrangement apparently was perfectly satisfactory to the employes and to the Carrier, but the Organization contends it resulted in a violation of the agreement and asks for additional compensation for each of the two employes.

Miss H. P. McCormick at the time the arrangement was made lived in Tully, New York, but was third-trick clerk-operator at Apulia, New York. When vacation time neared for the agent-operator at Tully, she made arrangements to relieve him for the period of his vacation. She had done this in years previous. Arrangements were also made with Extra Operator A. A. Natoli to relieve Miss McCormick at Apulia for the same period. Had Miss McCormick not desired to relieve the Tully agent-operator, that job normally would have gone to Natoli.

Although both Miss McCormick and Natoli have disavowed any interest in getting more than ordinary pay for the jobs involved in this swap, the Organization has made the following claims for them under Rules 5, 11 and 23:

1. Miss McCormick be paid time and one-half rate of her regular position at Apulia for each hour she performed service at Tully outside of the hours of her regular assignment at Apulia, plus straight time rate for each hour she was suspended from her regular position, to include May 28th the day she must have lost in making the transfer Apulia to Tully, less the compensation previously allowed.

2. Mr. Natoli be paid at time and one-half of the Tully rate for each hour he performed service at Apulia outside of his assigned hours at Tully, plus eight hours at straight time rate of the Tully position each day he was suspended from that assignment, less the compensation previously allowed.

We must deny these claims. In each of the rules which the Organization says the Carrier violated there is either the implication or outright statement that a **requirement** on the part of the Carrier is involved. (Rule 5 is predicated on a notification or call by the Carrier, Rule 11 on a requirement, Rule 23 on an assignment.) In this case we find no evidence of the Carrier **requiring** or **assigning** the job swap. It was purely voluntary. As we understand the facts Miss McCormick initiated the whole deal because she wanted to work in her home town, while Natoli didn't care which job he filled. The Carrier in this case merely **assented** to the swap. It should not be penalized.

Swapping days off and vacations is as old as days off and vacations in round-the-clock industries. Usually such trades are headaches to the employer, and some hard-hearted ones refuse to permit the practice. To penalize the Carrier for allowing the employe-initiated trade in this case would be neither equitable nor justified by the agreement.

The Organization appears to be more concerned with principles than facts in this case. It fears that the whole agreement might eventually be broken down by deals between the individual employes and the Carrier. Such deals, it fears, might be made either by connivance or by intimidation on the Carrier's part, under the guise of voluntarism.

We answer this by stating thatt his Board would give short shrift to the Carrier if it found connivance or intimidation played any part in this case or any like it. We find no evidence of such before us 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1947.