

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad Company that R. P. McCann, who was regularly assigned to the second trick towerman position at "BY" Tower, effective December 1, 1944, who was not allowed by the Carrier to assume duty thereon, and, who instead was required by the Carrier to perform emergency relief service at "WF" Office, Binghamton, December 1 through December 12, 1944, shall be additionally paid, in accordance with the provisions of Rule 15(a), of the Telegraphers' Agreement, the higher rate of the two positions, \$1.00 a day for expenses, and thirty (30) minutes travel time for each, the initial and final trip.

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.

The Telegraphers' Agreement at page 27, lists the following positions with rates of pay: (each rate during 1944 was 19¢ above the rate shown)

BINGHAMTON

"WF" Office:	AN HOUR.
Operator	\$.81½
Operator80
"BY" Tower:	
Towerman, First Trick80½
Towerman, Second Trick80½
Towerman, Third Trick80½

On December 1, 1944, R. P. McCann, who had previously been regularly assigned to the third trick operator position at "WF" Office, became regularly assigned to the second trick towerman position at "BY" tower by virtue of seniority, qualifications, application and assignment.

December 1 through December 12, 1944, the Carrier required said R. P. McCann to perform emergency relief service away from his regular assignment and declined to compensate him therefor in accordance with the provisions of Rule 15 (a).

When they are required to do relief work at any office other than the one to which assigned, they will be paid the rates of the position they fill, but not less than their regular rates and shall be paid straight time on the minute basis at the rate of the higher paid position while traveling to and from the temporary assignment, in no case to exceed eight (8) hours pay. In addition to this they shall be reimbursed for any time lost in making the change, also receive one dollar (\$1.00) per day for expenses."

This Rule was agreed to by both parties in 1940 to cover emergency situations when it became necessary for an employe to give up his temporary or regular assignment to do relief work elsewhere and not to cover a case where an employe is not immediately placed on the position he bid in. In this case, Mr. McCann, (who made no personal complaint), was not forced to leave his own position but merely delayed in taking a temporary position, three miles distant, at $\frac{1}{2}$ cent per hour more in wages. Because of Mr. McCann's fine spirit of cooperation in this time of stress, the Carrier, without prejudice to its position respecting Rule 15 (a) offered the Organization a settlement on the basis of paying Mr. McCann the difference in the rates of the positions involved. This was not accepted by the Organization.

Mr. McCann did not actually work at BY Tower from December 1 to December 12, 1944, therefore, it cannot be said that he was forced to leave BY Tower and go to WF Office to perform relief work. Rule 15 (a) was never intended to cover such a case.

CONCLUSIONS

(1) Carrier maintains that Rule 15 (a) was not violated under the circumstances.

(2) Awards cited by the Organization are not controlling.

(3) Rule 16 (c) is controlling, and was complied with, inasmuch as Mr. McCann was placed on his temporary position as promptly as possible which in this case entailed a period of twelve (12) days, or about one-fifth the time appearing in Award 2174.

(Exhibits not reproduced.)

OPINION OF BOARD: In Carrier's submission it explains that "prior to December 1, 1944, Operator R. P. McCann (the claimant) was assigned to third trick * * * position at WF telegraph office, located in Binghamton, N. Y. * * * A temporary vacancy at the BY Tower in East Binghamton, about 3 miles distant from the WF office was bulletined November 17, 1944, and bid in by claimant who was assigned to the BY Tower job by Bulletin No. S-728, dated November 30, 1944. This bulletin stated under the heading "Assignments" as follows:

"The positions advertised in Bulletin No. S-727 are hereby assigned as follows:

(1) Temporary vacancy * * * BY Tower * * * to Robert McCann."

Instead of being placed in the new position to which he had thus been assigned, claimant was required to remain on his old position during the first twelve days of December.

He is here claiming differential in rate, travel time and expense allowance all pursuant to Rule 15 (a) for being required to do relief work on his old position for those 12 days.

Carrier contends that this dispute turns upon the use of the word "promptly" as used in Rule 16 (c) which provides:

"New positions or vacancies will be promptly bulletined for a period of ten days and assigned promptly according to the above rules. * * *"

The bulletin assigning claimant to the new position said that he is "hereby assigned." That was November 30, 1944, and the bulletin was signed by F. Diegtel, Superintendent.

On the same day, by the same bulletin claimant's old position in the WF Office was bulletined as a "temporary vacancy."

In the correspondence between the parties on the property Superintendent Diegtel in his letter of May 18, 1945, to the Local Chairman, after explaining why he did not think he should allow claimant travel time and expense, said:

"* * * although I am agreeable to allowing McCann the difference in the rate of the two assignments for the period mentioned."

This could only mean that he was willing to pay claimant the rate for his new position since the new position paid the higher rate.

In three similar cases between these same parties, involving these same rules, this Board has held that this Carrier by its own conduct has conclusively determined this issue of assignment adversely to itself and precluded itself from asserting that an assignment, once made, is not in effect because the employee has "not occupied the position and commenced his duties there." Awards 2843, 3228 and 3610. It is true that in each of these cases the employee was held off of the new position longer than in the instant case. However, in each of those cases the Award treated the assignment as being effective the date it was made and allowed pay and expenses from that day on until the employee was permitted to fill his new position.

The second principal contention of the Carrier is that, since the new position here was only three miles distant from the old, claimant is not entitled to the travel time and expense allowance specified in Rule 15 (a).

Awards 2604, 2843 and 3134 hold directly against the Carrier on this second contention. All of these awards hold that the expense allowance is an arbitrary allowance and that nothing in Rule 15 (a) indicates that its provisions are not to apply when the relief assignment is in the same city.

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 claimed.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1948.