

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company (Lines West of Buffalo).

1. That the Carrier violated the first paragraph of Article 13-(c) of the Telegraphers' Agreement when commencing May 6, 1943, and continuing through to January 2, 1946, it failed to assign Telegrapher J. R. Moots to the temporary vacancy on the 9:00 A. M. to 5:00 P. M. ticket clerk-telegrapher position in the Sandusky, Ohio, passenger station for which he had made application as the senior qualified employe under the first paragraph of Article 13-(c) of the Telegraphers' Agreement.

2. That the Carrier violated the second paragraph of Article 13-(c) of the Telegraphers' Agreement when it failed to advertise the said temporary vacancy until July 10, 1943, and then failed to assign the successful applicant, and then failed to readvertise the temporary vacancy subsequent to July 10, 1943.

3. That Telegrapher J. R. Moots who was required to work elsewhere on other positions with hours different from the hours of the temporary vacancy in the Sandusky office which was contractually his shall be compensated under Articles 9 and 12 of the Telegraphers' Agreement at the pro rata rate for the hours he was suspended on each day during the regular hours of said temporary vacancy to work elsewhere and at the rate of time and one-half under Articles 4 and 5 of the Telegraphers' Agreement for the hours he was thus required on each day to work outside of the regular hours of the temporary vacancy.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement effective February 1, 1943, between the parties to this dispute. Said agreement was superseded by the agreement bearing effective date of July 1, 1946 which is now in effect.

At the time of this dispute Mr. R. E. Powless was the regular incumbent of the first trick ticket clerk-telegrapher position at Sandusky, Ohio, Ticket Office, with hours 9 A. M. to 5 P. M., daily except Sunday. On April 29, 1943, Mr. Powless bid in a temporary vacancy at Fremont, Ohio, in accordance with the following rule, Article 13(c) pertinent to this dispute.

again cited by the employees here, which cover the same principle involved herein and settled the issue.

2. No rule in the Agreement supports the claim.
3. Claimant lost no time and was not diverted from his regular assignment.
4. Claimant was properly paid for all service performed.
5. The claim is unreasonable and without merit, is not supported by contractual provisions and should be denied.

OPINION OF BOARD: A temporary vacancy in the 6 day position of ticket clerk-telegrapher, hours 9 A. M. to 5 P. M., at the Sandusky Ticket Office was created April 29, 1943, by Powless, who was regularly assigned to the position, taking a temporary vacancy at another station.

May 4, 1943, Moots, the claimant, holding a regularly assigned position at the B&O Tower, hours 3 P. M. to 11 P. M. asked to fill the temporary vacancy at Sandusky by a telegram which said:

"Am asking for extra work position Opr Clerk 1st trick RH office Sandusky under Article 13-(c) ORT Agreement."
Article 13-(c), paragraph 1, provides:

"* * * Temporary vacancies of seven (7) calendar days or more and less than thirty (30) calendar days will be filled by the senior qualified employee applying for same within seven (7) calendar days."

Moots was not transferred to the position as required by the rule.

Failure to assign Moots to the position and later failure to advertise the vacancy pursuant to the second paragraph of Rule 13-(c) was protested by the General Chairman to the Superintendent. On July 10, the position was advertised pursuant to said last mentioned rule. On July 16, 1943, the Carrier assigned the position to one, Bense, the senior qualified applicant. Bense, however, was continued in relief work in other positions and never was actually transferred to this position.

On July 21, 1943, the position of 2d trick clerk-telegrapher at Sandusky was advertised as a "permanent" vacancy. The claimant bid for and was assigned to this permanent position, effective August 11, 1943. For some eighteen months thereafter he worked this position seven days per week, because there was no available telegrapher to relieve him on his rest days.

The Carrier throughout this controversy contended that the shortage of available qualified telegraphers justified the failure to transfer Moots to the Sandusky position. The records seem to support Carrier's contention that during the period in question there was a real shortage of available employees. This Board has held that the fact that there was not an available employee amounted to such an emergency as to justify using a regularly assigned employee from his regular position for relief work. Rule 13-(a), first paragraph, of the agreement between these parties provides that a regularly assigned employee may be used for relief service under such circumstances.

Since the Carrier did not transfer claimant to the Sandusky position as required by the first paragraph of Rule 13-(c) we must consider this case as if claimant had been so transferred and that he was doing emergency relief service on his B&O Tower position. He must therefore be paid pursuant to the provisions of the first paragraph of Rule 13-(a).

The next question is as to the length of time he must be so paid.

The Carrier insists that when Bense bid in the Sandusky position as the senior employee and was assigned to the position as of July 16, 1943,

the claimant lost all right to the position; and that any claim for that position from that time on belonged to Bense.

The Organization, on the other hand, contends that if claimant had been assigned to the position as required by the Agreement he would have continued in the position until actually displaced. Article 24-(b) is cited as supporting this contention. That Rule provides that an employee advised that he is to be displaced "will not be moved until actually displaced". It seems reasonable to suppose that if claimant had been placed in the position he would have continued to hold it even after Bense was assigned to it since Bense did not actually take it.

On August 11, 1943, however, Moots was actually assigned and transferred to a permanent second trick position at Sandusky which he had bid in. This position was advertised and taken by claimant pursuant to the provisions of Article 27 of the Agreement. That Article expressly provided that:

"* * * An employee assigned to such position forfeits all rights to the position he vacates until such position has been once permanently filled."

We find no possibility of holding that claimant could have any interest in the first trick Sandusky position after his transfer to the second trick Sandusky permanent position.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived 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 claimant should be considered as having been assigned to the Sandusky 1st trick position during the period from May 6, 1943, to August 10, 1943, and as having been required to do emergency relief service for the same period on the B&O Tower position under the provisions of Rule 13-(a).

The fact that the Sandusky first trick position was not advertised within the time required did not affect claimant's rights.

AWARD

Claimant shall be paid pursuant to Rule 13-(a) for the period from May 6, 1943, to August 10, 1943, both dates inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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