

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

James M. Douglas—Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana, that Telegrapher C. R. Tanner, who was improperly displaced from the position of 2nd wire-chief telegrapher in the San Antonio, Texas, relay office January 25 thru May 2nd, 1943, by a telegrapher who had acquired no displacement right in this office, shall be paid the difference between what was paid him and the amount he would have earned as wire-chief telegrapher during this period had he not been improperly displaced.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement by and between the parties effective October 15, 1940, is on file with the National Railroad Adjustment Board.

Telegrapher H. I. Crist, Sr., was regularly assigned to Uvalde, Texas Agency and when message job was bulletined as a temporary position at "MS" San Antonio relay office, and was bid in by Crist. This position was assigned to work 6 days per week, there being no assignment on Sundays. C. R. Tanner, an extra telegrapher in relay service, was sent to San Antonio off the extra board to work extra on third trick. Telegrapher W. R. Needham was regular second trick wire-chief telegrapher and when there was a temporary vacancy on third trick wire-chief-telegrapher position he elected to move to third trick, thus leaving his second trick temporarily open instead of third, which was then Tanner's job. Needham had a right to do this. Crist, Sr., holding no rights in the office except to the temporary position of 6 days he had bid in, elected to move to second trick displacing Tanner on January 25, 1943. Rules 3-H and 3-L are involved and quoted below:

**Rule 3-H:** "Temporary positions or vacancies of thirty (30) days or more, will be bulletined five (5) days and filled within ten (10) days from the date of bulletin, the successful applicant's position to be filled by advancing employees in such office according to their seniority if they so desire. When such changes conflict with the Hours of Service Law employees may advance by losing the time, the last position made vacant to be filled from the extra list, except no such position will be filled from the extra list for more than sixty (60) days without a temporary bulletin being issued. Employees desiring leave of absence under this section will give the proper officer not less than fifteen (15) days advance notice and such vacancies will be bulletined not less than ten (10) days in advance of beginning date of leave of absence requested. Regular assigned employees assigned such positions will not be paid for time lost in making transfer until after two (2) days have elapsed. Successful

7. The claim as computed and presented by Mr. Tanner (his letter December 4, 1943) is not only not supported by the record, but is obviously in error.

In the light of the foregoing it is the position of the Carrier that there is no basis in fact, in equity, nor under the terms of the Telegraphers' Agreement for the alleged claim here presented. Therefore, the contention of the Employees should be dismissed and the accompanying claim accordingly denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** One Crist who held a regular assigned position at Uvalde, Texas bid in a temporary position at "MS" San Antonio relay office. Under Rule 3 (h) of the Agreement an employe obtaining such a temporary assignment will not be permitted to return to his regular position until the expiration of the time limit specified in the bulletin unless the regular occupant of the position returns to it or unless the vacancy becomes a permanent one and he bids it in. While Crist was filling such temporary position, a six-day position, another position in the same office, a seven-day, higher rated position, became temporarily vacant and Crist took this position under the same Rule 3 (h) which provides for filling a temporary vacancy by advancing employes in the same office according to their seniority, if they so desire.

Claimant Tanner, who had a regular assignment in the office, asserts that Crist had no "move-up" rights, and by moving up improperly displaced him from such temporary assignment.

Rule 3 (h) is not definite on the subject but it apparently contemplates that an employe with a regular assigned position who takes a temporary assignment must retain the temporary assignment until the rule releases him from it, that is, by expiration, or return of the regular occupant, or by the vacancy becoming permanent. Under this construction the employe is not free to leave his temporary assignment and "move-up" to another temporary vacancy. The record indicates that this construction has been previously placed upon the rule and followed by the parties.

Accordingly, since Crist was not entitled to "move-up," Claimant should have been given the position. Therefore, his claim must be sustained.

**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 Employees 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 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 18th day of March, 1948.

**DISSENT TO AWARD 3810—DOCKET TE-3753**

Irrespective of what may be the proper application of the rules in subsequent situations, the following outstanding facts of record required denial of this claim:

The move by Telegrapher Crist on January 25, 1943, was sanctioned and approved by Mr. J. H. Loper, who not only was the Manager of the Telegraph Office but was as well Local Chairman of the Telegraphers' Organization.

The cause which gave rise to this dispute terminated as of May 2, 1943, yet no claim was filed by Tanner, or by the Organization in his behalf, until Tanner's letter of December 4, 1943, more than 10 months after the change made on January 25, 1943, and 7 months after the situation giving rise to his letter of December 4, 1943, ceased to exist. The Organization could not plead ignorance of the move or alleged violation because Mr. Loper, who as Manager of the Office sanctioned and approved the move, was also Local Chairman of the Organization and as late as December 6, 1943, stated the move was allowed as that had been the custom during the life of the present agreement.

Without protest by Tanner or anyone in his behalf until 7 months after the cause which gave rise to this dispute ceased to exist, the Organization seeks to penalize the Carrier and is upheld by this Award for an alleged violation committed by its own Local Chairman without the Carrier having been put on notice to correct the alleged violation during the period it existed.

(s) A. H. Jones  
(s) R. H. Allison  
(s) R. F. Ray  
(s) C. P. Dugan  
(s) C. C. Cook