

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, 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:

Raymond Thomas an extra board employe, be paid a day's pay on February 1, 2, 3, 4, 5, 6 and 8, 1947, under Rule 18, of the Telegraphers' Agreement, when a junior employe was assigned to cover the temporary vacancy on third trick at Scranton Yard Office on those dates.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, as to rules and May 22, 1946, as to rates of pay, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

February 1 through February 9, 1947, regularly assigned third trick operator (12 midnight to 8 A.M.) S. R. Knickerbocker, Scranton Yard Office, was absent from duty account illness. Mr. Knickerbocker reported off duty at 2 P.M. which gave the Carrier ten hours to notify or call the senior available extra employe to protect the vacancy. At 4 P.M. Extra Employe G. Regan was notified to protect the vacancy. Raymond Thomas, senior to Regan maintains a telephone to receive calls for work and it is listed with the Chief Train Dispatcher. Mr. Thomas was at his home (a stone's throw from the Chief Dispatcher's Office) all day, but was not called, thus losing seven days' work, viz., February 1, 2, 3, 4, 5, 6, and 8.

February 7 was the relief day assigned to the position, hence the regular relief employe occupied the position on that date. February 9 Regan was displaced by senior extra employe Logan, who was also senior to Thomas. Thomas has a seniority date of October 7, 1945, Regan January 22, 1946.

The Organization on behalf of Raymond Thomas filed claim for seven lost days' pay. The Carrier denied the claim.

POSITION OF EMPLOYES: This is a simple story and is simply told, with reliance on the provisions of Rule 18, of the Telegraphers' Agreement. As indicated by the Organization's Statement of Facts, at or about 2 P.M. Third Trick Operator Knickerbocker, Scranton Yard, reported off duty account illness—this on February 1 and which meant he would not report at midnight that night. The Carrier's accounting method designates a trick

2. Mr. Thomas failed to leave word where he could be reached in order to make himself available.

3. If Mr. Thomas desired the job in question, he could have had same on February 2, or subsequent thereto, for the asking. This, Mr. Thomas, did not do.

4. The facts plainly establish that Mr. Thomas was not available and that he did not want the third trick job at Scranton Yard Office else he would have exercised his seniority rights on same, subsequent to February 1.

(Exhibits not reproduced.)

OPINION OF BOARD: As pointed out by the submissions, this is a claim by the organization on behalf of Raymond Thomas, an extra board employe, and the contention is that this employe is entitled to a day's pay for February 1, 2, 3, 4, 5, 6 and 8, 1947, on account of the failure of the Carrier to call him for a temporary vacancy occurring on February 1 and continuing through the other days mentioned, which vacancy was assigned to a junior extra employe. It is claimed that in what was done Rule 18 of the controlling agreement was violated. The rule is the following:

"A temporary vacancy of three (3) days or less duration will be filled by the senior qualified employe not then employed, if available."

The position involved was that of telegrapher-operator, Scranton Yard Office, assigned hours 12 midnight to 8:00 A.M. S. Knickerbocker was regularly assigned to the position. About 2:00 P.M., February 1, 1947, Knickerbocker reported off the position until further notice on account of sickness. Thomas was third in seniority of those entitled to be called for the temporary vacancy.

The two senior to Thomas were called and found to be unavailable. An effort was made to call Thomas. The effort was made by telephone call to his residence. There was one telephone call with no response, so the Carrier considered him unavailable. The fourth extra man was then called and having responded he was assigned to the vacancy. He held the assignment for the days for which claim was made.

The evidence of the organization indicates that Thomas was at home but that his telephone did not ring. With this in mind, it takes the substantial position that he was available but that the Carrier made no sufficient effort to ascertain the fact. It contends that the Carrier did not fulfill its obligation to the employe when with the number of hours it had to fill this temporary vacancy it made but a single telephone call to which there was no response; that it could not reasonably, on this effort, conclude that Thomas was unavailable and assign the vacancy to an employe junior to him.

This division had before it in Award 3845 a comparable situation. In the Opinion there it was said:

"In the light of the reciprocal obligations of the agreement it appears not unreasonable to require that, Todd being available, the carrier under the circumstances should have used greater diligence in an effort to extend the call. Of course, if the showing here indicated an urgent and immediate need a different attitude would be required. The record does not so show."

We think the statement in that Opinion is apropos here and that the claim here in this respect should receive the same treatment as did the claim there, that is, that the decision should be favorable to the organization.

The Carrier contends that Thomas, though not called on February 1st, could have taken the vacancy in any event on February 2nd, or on any day thereafter. The effect of this is to say that even if he was wrongfully kept from the assignment on February 1st, still he is entitled to be compensated

for but one day since he could have held it on all other days covered by the claim.

It does appear that under Rule 17 (a) of the agreement, he had the right to displace the occupant, however, he says that he had no knowledge of the situation until the 7th of February. This raises the question of whether or not his lack of knowledge, under the circumstances, excused him from making application for displacement under the rule. We think it does. His lack of knowledge in the first instance existed through the fault of the Carrier. Nothing occurred thereafter to charge him with knowledge or put him on inquiry.

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 claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1948.