

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, 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:

1. R. P. McCann, who was regularly assigned to the clerk-operator position at Greene, New York, effective March 10, 1945, 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 other locations (WF Office and BY Tower) March 10 through April 9 and April 16 through April 18, 1945, (except March 23) 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 of the initial and final trips, and

2. R. P. McCann shall be allowed one day's pay, at the Greene rate of pay, March 23 account that day lost to him when and because the Carrier required him to transfer from second trick to third trick at WF Office, which involved the Hours' of Service Law.

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 pages 27 and 30, of the Telegraphers' Agreement, the following positions with rates of pay are listed (each rate during 1945 was 19¢ an hour above the rate shown):

Binghamton:

WF Office	
Operator	.81½ an hour
Operator	.80 an hour

BY Tower

Towerman, First Trick	.80½ an hour
Towerman, Second Trick	.80½ an hour
Towerman, Third Trick	.80½ an hour

Greene

Agent-Operator	\$151.20 a month
Clerk-operator	.70 an hour

This Board is in accord with the judicial definition of "promptly" because in Award 2174 the Board said:

"* * * But the employes contend that the substance of the rule was evaded in that more than **two months** elapsed between the time Ragland was assigned to the position at Sterlington and the time he was transferred to it. The contention is based on the theory that, in contemplation of Rule 10, upon assignment to a position the employe is immediately entitled to the emoluments pertaining to it. * * *

"We think assignment to a position, in contemplation of Rule 10, does not carry with it the right to immediate transfer to it. However, this does not leave the time of transfer to the caprice of the carrier. The transfer must be made within a reasonable time. **What is a reasonable time must be determined from the facts and circumstances of the particular case.**

"Under ordinary conditions Ragland's transfer to the position at Sterlington could not be said to have been made within a reasonable time after his assignment to it. But **we think the carrier has shown that it was confronted with exigencies, arising from extraordinary traffic conditions and a shortage in available manpower, beyond its control.** There is nothing in the record to indicate that it was arbitrarily or capriciously withholding Ragland's transfer. On the contrary we think the record amply warrants the conclusion that the Carrier was acting in good faith and consummated Ragland's transfer to the position at Sterlington as soon as was reasonably possible **under the circumstances and conditions** with which it was confronted."

Under the circumstances confronting it, the Carrier acted "promptly".

The Carrier maintains that Awards Nos. 2604 and 2843, cited by the Organization, are not controlling, especially in view of the fact that disputes decided under these Awards took place in 1942 and 1943, and it is a commonly known fact of which the Board will take judicial notice that the manpower situation became progressively worse as the War continued. As previously stated, the Organization refused to cooperate in a temporary arrangement to relieve this shortage.

CONCLUSIONS:—

1. Carrier maintains that Rule 15 (a) was not violated under the circumstances.
2. Awards cited by Organization are not controlling.
3. Rule 16 (c) is controlling and was complied with, inasmuch as Mr. McCann was placed on his temporary position at Greene, N. Y., as promptly as possible.
4. But assuming that anything is due to claimant, it is traveling time on initial trip March 20 and final March 22 between "BY" and "WF" with one day lost time for March 23 plus arbitrary of \$1.00 per day for expenses on March 20, 21, and 22, under Rule 15 (a).

(Exhibits not reproduced.)

OPINION OF BOARD: There is little dispute about the facts herein. R. P. McCann, on whose behalf the claim is made, held regular assignment as Operator at W.F. Office, Binghamton Passenger Station, New York, during the time herein under consideration. On March 10, 1945, he was on a temporary assignment at BY Tower at East Binghamton, New York. On February 19, 1945, a temporary position of Clerk-operator at Greene, New York, was bulletined. McCann bid on the position and was the successful bidder. He was notified that he was the successful bidder March 9, 1945, but was not allowed to take the assignment until April 19, 1945. Instead he

was required to remain at BY Tower from March 10 to March 19, 1945, inclusive, when he was required to work WF Office March 20, 21, 22 and 24, 1945. He lost March 23, 1945, on account of required transfer on one day from second trick to third trick at WF Office. On March 26, 1945, he was returned to BY where he remained continuously to and including April 9, 1945. From April 10 to 15, 1945, inclusive he was away from service on vacation. From April 16 to 18, 1945, he was again in service at BY Tower. On April 19, 1945, he was allowed to proceed to the assignment at Greene.

The first item of the claim is for the work required of McCann at WF Office and BY Tower on and after March 10, 1945, to and including April 18, 1945 on the ground that it was relief work at an office other than the one to which he was assigned within the meaning of Rule 15 (a) of the agreement and that he is entitled to the rate of pay of the higher rated of the two positions together with travel time of 30 minutes for each initial and first trip and \$1.00 per day for expenses.

The second item of the claim is for the day lost on account of transfer from second to third trick as mentioned. This item of the claim appears to be clearly valid so no further discussion will be had as to it.

Reverting to the first item, Rule 15 (a) is the following:

"(a) Employees holding temporary or regular assignments will not be required to do relief work except in case of emergency. 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."

It should be said here that we are not concerned here with rate of pay since the rates at WF Office and BY Tower exceeded the rate at Greene.

The theory of the Brotherhood is that McCann was entitled to go to the position at Greene promptly, which meant within the meaning of the first paragraph of (c) of Rule 16 on March 10, 1945, and that the work thereafter at WF Office and BY Tower was entitled to be treated as relief work away from the assignment at Greene.

On the other hand the Carrier substantially contends that there was no violation of the agreement, but that it had a reasonable time within which to place McCann in the assignment at Greene and that under the circumstances and a fair interpretation of the provisions of the Rule it did so place him promptly.

The provision in question of Rule 16 (c) is the following:

"(c) New positions or vacancies will be promptly bulletined for a period of ten days and assigned promptly according to the above rules. Name of the successful bidder will be posted."

The Carrier asserts substantially that McCann was not assigned to the position at Greene earlier because of inability to secure a qualified telegrapher to relieve at WF Office and BY Tower, hence it could not be said that he was not assigned promptly within a fair interpretation of the Rule.

We think we may not consider the question of whether or not relief was available for the WF Office in determining the rights of McCann under this claim, since the assignment to Greene entailed removal from BY Tower and not from WF Office. Assuming that McCann was properly held at BY Tower all work done by him at WF Office during the period covered by the claim would have to be classed as relief work since the current assignment of McCann was at BY Tower. The fact that this was the assignment to which he was to return after completion of the temporary assignment did not

permit interim use in that position except for the purpose of relief. We must, therefore, limit our consideration to the question of whether or not the Carrier, within the meaning of the Rules, promptly assigned McCann from BY Tower to Greene.

It is thought that Award 2174, while not directly controlling, contains language which furnishes the key to the proper decision here. It is pointed out therein that **promptly** does not mean **immediately** but that it means **within a reasonable time** in the light of the circumstances of the particular case. It is also pointed out therein that shortage in available manpower beyond the control of the Carrier is a matter which may be considered as a circumstance in determining what is a reasonable time.

The record here discloses a shortage of manpower sufficient to sustain the defense of the Carrier to and including March 19, 1945, but we do not think it sufficient as a defense to the entire claim. McCann was relieved from BY Tower on March 19, 1945, and worked at WF Office March 20, 1945, and thereafter for a few days. There was then clearly relief for him on March 20, 1945, at BY Tower. Reasonably then at the moment relief was available at BY Tower he was entitled to his assignment at Greene. Thereafter, work in either WF Office or BY Tower became relief work away from his assignment at Greene.

It appears therefore that the first item of the claim should be sustained on the basis claimed for all dates and travel time contemplated by the claim from March 20, 1945, to April 18, 1945, both dates inclusive.

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 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 Item 1 of the claim is sustained on the basis claimed for all dates contemplated from March 20, 1945, to April 18, both dates inclusive.

Item 2 of claim sustained.

AWARD

Claims allowed as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1948.