

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Milwaukee, St. Paul & Pacific Railroad Company, that in accordance with the provisions of Rule 15 (a) of the Telegraphers' Agreement extra telegrapher H. H. McLeese shall be paid:

(a) Eight (8) hours at the rate of pay applicable to the first trick telegrapher position at Ewan, Washington, for the time lost July 31, 1946, when instructed by the Carrier to transfer from the first trick telegrapher position at Ewan, Washington, to the third trick telegrapher position at St. Maries, Idaho; and

(b) Eight (8) hours at the rate of pay applicable to the third trick telegrapher position at St. Maries, Idaho, for the time lost August 18, 1946, when instructed by the Carrier to transfer from the third trick telegrapher position at St. Maries, Idaho, to the agent position at the same station.

EMPLOYEES' STATEMENT OF FACTS: Claimant McLeese, on the date of this claim, was an extra telegrapher. He performed service as such prior to and subsequent to the date of this claim.

As an extra telegrapher he moved from one point to another under instructions of an officer of the Carrier and performed service as similarly instructed. Claimant McLeese completed service at Ewan, Washington, at 4:00 P. M., July 30, 1946. He was instructed to and did go to St. Maries, beginning service at St. Maries at midnight, July 31st, and worked until 8:00 A. M., August 1st, continuing on that position until relieved at 8:00 A. M., August 17th; and when relieved, he was instructed to perform relief work on the agent's position, commencing 8:00 A. M., August 19th.

POSITION OF EMPLOYEES: On the date of the claim, there was an agreement between the parties dated May 1, 1939.

The claim is based upon Rule 15 (a) of the agreement of May 1, 1939, which we quote:

"Employees shall be paid eight (8) hours each calendar day for time lost in transferring from one station or position to another at the rate of the position from which transferred, except such time as may be lost of the employee's own accord. The word 'transferring' includes transfer in the exercise of seniority or upon instructions of the proper officer and time lost checking in and out of positions."

tated establishing a temporary third trick position at that point, was instructed to go to Birmingham to work the third trick position. In transferring from Braymer to Birmingham he did not perform service on March 17, 1947. He had not concluded the relief work on second trick at Braymer and had he not been sent to Birmingham he would have continued to work on the second trick position at Braymer, which would have included March 17th.

Claim was presented for eight hours as time lost transferring, and because of the circumstances involved the claim was paid with the distinct understanding that where an extra telegrapher has completed work on a position or is displaced in the exercise of seniority before the regular occupant returns to work, he would no longer have any claim to the work on that position and is without a job until he commences work on another position. See Carrier's Exhibit "A."

SUMMARY

The carrier asserts that its foregoing position conclusively establishes that these claims are without merit and should be denied for the following reasons:

1. Rule 15-(a) is not applicable to extra telegraphers.
2. Claimant was not available under the Hours-of-Service Act on July 31st.
3. The distinct understanding had in the settlement of the claim for March 17, 1947, of the extra telegrapher transferring from Braymer to Birmingham.
4. Claimant has been properly paid for deadheading under Rule 16.
5. The mere fact that upon completion of service at Ewan on July 30th and at St. Maries on August 17th there happened to be temporary work available on the second or third day following would be no more reason for payment for time lost between such extra assignments than if there had been an interval of several days before another vacancy occurred. For instance, an extra telegrapher might complete work on a vacancy at Station (A) on Monday and there would be no further vacancy to fill until another occurred at Station (B) on Friday. Obviously there would be no justification for a claim for three days' pay, Tuesday, Wednesday, and Thursday, transferring from Station A to Station B under Rule 15. Under the interpretation the employees are now attempting to place on Rule 15, there would be no more reason for the carrier having to pay the claimant a day's pay on July 31st and a day's pay on August 18th than there would be for the carrier having to pay an extra employee who had completed work on a vacancy on Monday and there was no further work for him until Friday.
6. However, in the event the division should decide there is merit to these claims, then the carrier, without prejudice to the foregoing, submits that it should be permitted to take credit for the payment which has been made under the Deadhead Rule.
7. A somewhat similar claim, based upon the Transfer Rule, identical in principle to Rule 15-(a) involved in the instant case, was denied by the Third Division in its Award No. 2389—(T. E. vs. S. P.—Pac. Lines—Referee Burque).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, an extra telegrapher, completed service on a first trick assignment at Ewan, Washington at 4:00 P. M. on July 30, 1946 and was directed to proceed to St. Maries, Idaho and assume an assignment at that location from 12:00 midnight until 8:00 A. M. He arrived at St. Maries at 4:30 A. M. on July 31 and began work at midnight completing the first day of that assignment at 8:00 A. M. on August 1st. He continued work on said assignment until relieved at 8:00 A. M. on August 17, 1946 and was instructed to relieve the Agent at St. Maries, taking over the latter assignment beginning 8:00 A. M. August 19, 1946. Employees bring claim

for two days' pay; one covering July 31, 1946 and the other August 17, 1946, citing in support thereof Rule 15 (a) of the Telegraphers' Agreement which reads as follows:

"(a) Employees shall be paid eight (8) hours each calendar day for time lost in transferring from one station or position to another at the rate of the position from which transferred, except such time as may be lost of the employee's own accord. The word 'transferring' includes transfer in the exercise of seniority or upon instructions of the proper officer and time lost checking in and out of positions."

Carrier asserts that Rule 15 (a) does not apply to extra telegraphers.

We think the crux of this case is a determination of whether or not Claimant lost any time in moving to and from the vacancies which he filled. Now, when taken off his assignment at Ewan it is clear from the record the reason therefor was the return of the regularly assigned occupant of the position and the same reason was present in connection with being taken off the third trick telegrapher's position at St. Maries. In effect then the two days involved in the claim were days spent in waiting between assignments. There is nothing in the record which would indicate that Claimant had any right to continue working on either the Ewan assignment or the telegrapher's assignment at St. Maries on the days mentioned in the claim, nor that he had any right to work any other assignment on those days. It is therefore clear that he did not lose any time in moving to and from the vacancies. (See Award 2389.) Accordingly, we hold that a denial award is in order.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.