

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

**STATEMENT OF DISPUTE:** Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis South western Railway that

(a) The Carrier violated Article 14 of the Telegraphers' Agreement, when it failed or refused to call Telegrapher J. H. Stone, Jr., the senior, idle, extra employe, to fill the temporary vacancy on the Malden, Missouri-Dexter Junction, Missouri, rest-day relief position from February 1 to February 6, 1949, both dates inclusive, and instead called an extra employe junior in point of service to Telegrapher Stone to perform this extra work; and,

(b) in consequence thereof the Carrier shall be required to pay Telegrapher Stone the amount he would have earned had the Carrier complied with the Agreement and called him to perform this extra work, to which he was entitled, on February 1-6, 1949, both dates inclusive.

**EMPLOYES' STATEMENT OF FACTS:** There is an agreement, bearing effective date of December 1, 1934, herein referred to as "The Telegraphers' Agreement", in effect between the parties to this dispute, copies of which are on file with the Board.

The following rest day clerk-telegrapher assignment, rate of pay \$1.32 per hour, is the position involved in this dispute:

Malden	7:55 a.m. to 3:55 p.m.	Sunday
Dexter Jct.	7:55 a.m. to 3:55 p.m.	Monday
Dexter Jct.	3:55 p.m. to 11:55 p.m.	Tuesday
Malden	3:55 p.m. to 11:55 p.m.	Wednesday
Malden	11:55 p.m. to 7:55 a.m.	Thursday
Dexter Jct.	11:55 p.m. to 7:55 a.m.	Friday
Saturday—rest day.		

The regular incumbent of the above mentioned position was temporarily absent from his position February 1, 2, 3, 4, 5, and 6, 1949, thus creating six (6) days of extra work.

Telegrapher J. H. Stone, Jr., seniority date August 6, 1948, was the senior idle extra employe and was available for duty but was not called by the Carrier to perform this temporary extra work in accordance with Article 14 of the Telegraphers' Agreement. Instead the Carrier called Extra Telegrapher M. J. Jones, seniority date November 1, 1948, to fill the position.

**POSITION OF EMPLOYES:** Article 14 of the Telegraphers' Agreement is clear and simple and easily understood, and is quoted below for the convenience of the Board:

of officers acquainted with his work. It was the opinion of Assistant Chief Dispatcher Gibbons who was charged with the responsibility of placing extra telegraphers on the different vacancies and who sent a junior telegrapher to the job. It was the opinion of Acting Assistant Chief Dispatcher W. L. Jones, who subsequently relieved Mr. Gibbons account illness. Following is copy of note sent to General Chairman Fitzhugh by Mr. Jones, who incidentally is General Chairman of the American Train Dispatchers Association:

"Pine Bluff -- March 31, 1949

Fitz:

Understand Stone has in claim for not being allowed work at Dexter Junction during time Gibbons working position. It is possible that to keep down complaints, etc., Gib did not use Stone on this position. I know that since I have been on this job have received several complaints about work performed by this boy. He is not good enough telegrapher, or agent to keep from being disqualified should he be required to work the jobs as he comes to them.

WLJ"

The facts are clear that Telegrapher Stone was not qualified for the position. Consequently the claim is not supported by the rules, and Carrier respectfully requests that it be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** A violation of Article 14 of the current Agreement is charged because the Carrier called an extra man who was junior to the Claimant to work as relief telegrapher on a vacancy at Malden, Missouri-Dexter Junction, Missouri, February 1 to 6, inclusive, 1949. Article 14 provides that the senior extra employee shall have preference to extra work.

The Carrier recognizes the force and effect of Article 14 in proper cases, but relies upon Article 18-1 which says that, "Employees will be in line of promotion and where ability and qualifications are sufficient in the opinion of the Management, seniority will prevail."

It appears from the record that Malden-Dexter Junction constitutes one of the heaviest train order points on the Carrier's system and that a very substantial part of the work there is handled by telegraph. Claimant entered the Carrier's service on August 6, 1948, when 18 years of age and with less than two months' training as a student telegrapher. Between the time when he was employed and when he was refused the position about which he now complains, the Claimant had worked 36 days at jobs where train orders were handled exclusively by telephone and 62 days on light branch line jobs where a limited number of train orders were issued by telegraph but were seldom received.

The record is devoid of evidence from which it may be deduced that the Carrier acted arbitrarily or capriciously. Under the circumstances Rule 14 must yield to Rule 18-1 and the Carrier's determination that the Claimant did not possess the necessary qualifications for the Malden-Dexter Junction vacancy cannot be disturbed.

**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 the 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 29th day of March, 1950.