

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, 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 and Western Railroad Company that:

(a) James Angelopoulos, regularly assigned second trick clerk-operator position Morristown Ticket Office, was improperly displaced from that position by T. J. McCormack on April 25, 1947, and

(b) In consequence thereof James Angelopoulos shall be returned to said second trick clerk-operator position and paid for any wage and/or time lost, plus the provisions of Rule 15 (a).

EMPLOYEES' STATEMENT OF FACTS: An Agreement by and between the parties, bearing effective date of May 1, 1940, and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

On March 15, 1947, T. J. McCormack regularly owned and occupied an "Operator" position in the dispatcher's office at Hoboken. He was displaced therefrom on March 16, 1947 by John J. Carson whose position at Hoboken yard office had been abolished March 15, 1947.

Effective 12:01 A.M. March 19, 1947, a new and additional "Operator" position was created in the Dispatcher's Office at Hoboken. T. J. McCormack was permitted to work this newly created position March 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31 and April 1, 2, 3, 4, and 5 as an extra employee. He performed no further work, extra or regular, until April 25.

Meanwhile, or on March 21, 1947, Mr. McCormack notified the Carrier and the Organization that since he had been displaced by Carson on March 16, he would displace James Angelopoulos who regularly occupied and owned the second trick "clerk-operator" position at Morristown Ticket Office. Not until April 25, 1947, did Mr. McCormack actually and physically displace Mr. Angelopoulos from the second trick clerk-operator position at Morristown ticket office. Mr. Angelopoulos, because of insufficient seniority to hold a regular position, reverted to the extra list.

POSITION OF EMPLOYEES: As the Employees' Statement of Facts briefly indicates, T. J. McCormack regularly held an operator position in the train dispatcher's office at Hoboken. Due to the abolishment of his position at Hoboken yard office on March 15, 1947, John J. Carson, pursuant to Rules

POSITION OF CARRIER: The claim of James Angelopoulos was never handled on the property. Insofar as incumbent of the second trick position at Morristown, N. J. being displaced was concerned, the employees by their own admission realized they had no claim when under date of April 12, 1947, Local Chairman J. H. Morris of the O.R.T. wrote former Superintendent W. G. White as follows:

"The Organization does not question the fact that the displacement made by Mr. McCormack was properly made." (Under-scoring Ours.)

The Employees after a lapse of approximately two years are endeavoring to insert a claim for James Angelopoulos purported to be the incumbent of the second trick position at Morristown, N. J. who the Employees have stated was properly displaced by T. J. McCormack.

The Carrier contends the claim of James Angelopoulos is not properly before the Board, is without merit, and it is respectfully requested that it be denied.

OPINION OF BOARD: The jurisdictional question raised by the Carrier that the claim handled on the property is not the same as the claim presented to this Board is without merit as this Board finds it is the same claim couched in different language.

The facts are not in dispute. McCormack was displaced on March 16, 1947 by senior Operator J. J. Carson, on his job as Operator, Hoboken Dispatcher's Office. He was then privileged to exercise his rights under Rule 16 (m).

Rule 16 (m) reads:

"An employe coming within the scope of this agreement, if displaced from regular position, must place himself within ten (10) days of date of such displacement, otherwise he will revert to the extra list and be permitted to exercise seniority only in connection with any position that may be vacant. An employe is displaced when he is actually relieved by employe displacing him.

When an employe has been displaced by a senior man, he shall be notified promptly."

On March 21, McCormack displaced the Claimant on second trick position, Morristown Ticket Office, hours 4:30 P.M. to 12:30 P.M. However, McCormack did not start to work the job until April 25, 1947 (according to joint check made May 19, 1947).

McCormack worked a new telegrapher position that had been established at Hoboken, hours 12:01 A.M. to 3:00 A.M. from March 19, 20, 21, 22, 24, 25, 26, 27, 28, 29 and 31 (23rd and 30th, Sundays), April 1, 2, 3, 4, and 5 (6th, Sunday), 1947. Operator-Clerk Oakley became available and worked the position from April 7th. McCormack laid off from April 6th to April 24th and reported for assignment of Claimant on April 25th.

The Carrier states that there was no extra employe to work the new telegrapher's position at Hoboken; that is the reason they allowed McCormack to work the position March 19th and March 20th as McCormack had not exercised his rights under Rule 16 (m) to displace the Claimant until March 21st. The Carrier further states that McCormack was used on the position from March 21st to April 7th because there was an emergency as they did not have an extra qualified man available to fill the position until April 7th. The Carrier contends that they had this right under Rule 15 (a).

Under Rule 16 (m) it states that a displaced employe "must place himself within ten (10) days of date of such displacement, otherwise he will revert

to the extra list." This Board interprets this rule to mean that he must actually take over the position within ten (10) days, not merely file his intention of taking over the position. When McCormack failed to take over the Claimant's position within ten (10) days from March 16th (the date McCormack was displaced), he reverted to the extra list and could not then take over Claimant's position on April 25th. The Carrier's contention that this was an emergency is not well founded and is without merit as this Claimant would have become an extra available employe when McCormack displaced him, and could have filled the job at Hoboken.

As to part (b) of this claim, the Carrier is ordered to pay to the Claimant this difference in pay of the position he was deprived of and the pay for the position or positions worked by this Claimant from April 25, 1947 to the date this order is put into effect. That part of the claim referring to monies due the claimant under Rule 15 (a) is remanded back to the parties for a check to ascertain if any travel time or expenses were incurred by the claimant due to the violation of the contract by the Carrier of Rule 16 (m).

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

Carrier violated the terms of the Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.

Dissent to Awards 4996 and 4997, Dockets TE-4831 and TE-4832

The provisions of Rule 15 (a) relied upon in claim (b) being recognized as obviously inapplicable under the holding in the Opinion that the involved circumstance was not an emergency, the last sentence of the Opinion, which remands that part of the claim under 15 (a) for ascertainment of any travel time or expenses due to violation of Rule 16 (m), represents vain and void requirement upon the parties because of lack of any provision in Rule 16 (m) relating thereto.

/s/ C. P. Dugan
/s/ C. C. Cook
/s/ J. E. Kemp
/s/ A. H. Jones
/s/ R. H. Allison