

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas G. 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 & Western Railroad Company that:

(a) Walter L. Wehr, regularly assigned to the 3 P.M. to 11 P.M. operator's position at Grove Street Tower was improperly displaced therefrom by H. Willm on July 1, 1946.

(b) In consequence of said improper displacement Walter L. Werh shall be paid for any wage and/or time lost plus the provisions of Rule 15 (a) between July 1, 1946 and April 16, 1947; and

(c) Any and all other employes adversely affected by said improper displacement shall be similarly paid.

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

Page 18, of the Telegraphers' Agreement lists:

Information Bureau, Operator First Trick85*
Information Bureau, Operator Second Trick81*
Grove St. Tower, Operator First Trick78*
Grove St. Tower, Operator Second Trick78*

*These rates have been progressively increased in accordance with National Wage Adjustments.

As of February 28, 1945, Walter L. Wehr owned and occupied the second trick operator position at Grove Street Tower, and H. Willm owned and occupied an operator position in "H" office, Hoboken. Effective March 1, 1945, the position owned and occupied by Mr. Willm was abolished and on March 5, 1945 he declared to displace Walter L. Wehr, his junior, who still owned and occupied the second trick operator position at Grove Street Tower. Mr. Willm did not actually and physically displace Mr. Wehr at Grove Street Tower until July 1, 1946. Between March 1, 1945 and July 1, 1946, Willm performed extra service on positions covered by the Telegraphers' Agreement and the Train Dispatchers' Agreement. On May 29, 1946, Mr. Willm cancelled his declaration

Part (c) of the claim is a vague generalization. No claim thereunder was handled on the property specifying dates, locations and claimants. The Board has repeatedly held that it will not entertain such a claim.

Under the circumstances, it is respectfully requested that the claim be denied.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The facts are not in dispute in this claim before us. H. Willm owned and occupied an operator position in "H" Office, Hoboken, which was abolished March 1, 1945 and the work transferred to 140 Cedar Street, New York City. Under Rule 26 H. Willm has a right of election.

Rule 26 provides:

"When an office is moved from one location to another and beyond the location of another office of like character, the individuals employed at the original location shall have the right to elect within five (5) days from the date of change whether they will follow the office. If they decide not to follow the office, Rule 21 applies."

On March 4, 1945, Willm by letter notified his superior as follows:

"On March 1, 1945, the position of Clerk-Operator Chief Train Dispatcher's Office, Hoboken, N. J. was transferred to 140 Cedar St., New York City.

I do not wish to follow this position and therefore would like to exercise my privilege according to the Telegraphers' Agreement under Rules 26 and 21.

I would like to displace the incumbent of the position of Desk Man, Grove St. Tower, Second Trick."

On March 5, 1945, Chief Train Dispatcher Crusier wired Walter L. Wehr as follows:

"WILLM DISPLACES YOU ON 2ND TRICK DESK GROVE STREET TOWER. WILL ADVISE YOU LATER WHEN HE WILL RELIEVE YOU SO YOU CAN ADVISE YOUR CHOICE."

From March 1, to April 27, 1945, Willm performed extra work and on April 23, 1945, he was assigned to a temporary vacancy by Carrier's Bulletin No. 15. This temporary vacancy expired November 21, 1945. From this date Willm worked extra to June 20, 1946. All this work was performed after he notified the Carrier that he would displace Wehr on March 4, 1945, under Rules 26 and 21.

Rule 26 is quoted above. Rule 21 reads:

"In the event of a reduction in forces in positions covered by this schedule, the incumbents of the positions abolished will have the right to any position covered by this schedule on the division where they are employed, which they are competent to fill, and the incumbents thereof are their juniors in the service and will be given employment on other divisions, if qualified, in preference to persons not in the service."

Under Rule 21 there is no time limit specified for displacement; therefore, Willm could displace Wehr at his pleasure.

However, on May 29, 1946, Chief Train Dispatcher Cruser wired Wehr as follows:

"PLEASE CANCEL MY MESSAGE DATED MARCH 5TH, 1945
RE WILLM DISPLACING YOU ON 2ND TRICK DESK, GROVE
ST. TOWER."

At this point Willm lost his rights under Rules 26 and 21, and now exercised his rights as an extra employe under Rule 16 (m), which 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 June 11, 1946, Chief Train Dispatcher Cruser wired Wehr as follows:

"ACCOUNT CANCELLATION OF BULLETIN NUMBER 23,
DATED MAY 28TH, 1946 PLEASE CANCEL MY MESSAGE TO
YOU DATED MAY 29TH, AND BE GOVERNED BY MESSAGE
STATING THAT WILLM DISPLACES YOU ON 2ND TRICK DESK,
GROVE ST. TOWER. WILL ADVISE YOU LATER WHEN HE WILL
RELIEVE YOU."

At this point Willm was an extra employe under Rule 16 (m) and was "permitted to exercise seniority only in connection with any position that may be vacant."

Therefore, the Carrier violated the terms of the Agreement when it allowed Willm after May 29, 1946, to displace Wehr.

The Board finds that as to claim (b) Wehr should be paid any monetary loss suffered by the displacement, less any amounts earned on position or positions occupied from July 1, 1946 to April 16, 1947 (dates of claim). That part of the claim referring to any 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).

As to part (c) of the claim, the Carrier states that this part of the claim is so vague that the Carrier is unable to make adequate answer, that no such claim was handled on the property. Award 4821 states:

"We think the correct procedure is to permit the filing of general claims where the question at issue operates uniformly upon a class of employes that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an Agreement ought not to be made unnecessarily difficult by requiring the filing of a multitude of claims when the disposition of a single issue decides them all. The Organization is authorized to represent the employes and where no prejudice arises out of group handling, we think it is entirely proper. Awards 4482, 3687, 2809, 2240."

We concur with this Opinion and Findings. Claim will be sustained.

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 Employees 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

Carrier violated the terms of the Agreement.

AWARD

Claim (a) sustained; claim (b) sustained in accordance with Opinion and Findings; claim (c) sustained.

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