

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana; that,

- (a) the Carrier violated the provisions of the Agreement between the parties, dated October 15, 1940, and Mediation Agreement A-2070, dated March 1, 1945, when it arbitrarily abolished the swing relief position, Trinity-Crockett-Grapeland, without abolishing the work of the assignment, on April 16, 1946; and
- (b) C. E. Konkel, who became regularly assigned to the Trinity-Crockett-Grapeland swing relief position as of April 25, 1946, but who was held from the newly assigned position and required to work extra on other positions, shall be paid for the resulting necessary expenses incurred for each day he has thus been held from his newly assigned position as provided by Rule 3-(e) of the Telegraphers' Agreement.

EMPLOYEES STATEMENT OF FACTS: An agreement by and between the parties to this dispute bearing date of November 15, 1940, is in effect.

Bulletin No. 37 issued March 24, 1946, advertised Rest Day Relief Position embracing the rest day relief work at Crockett, Grapeland and Trinity, a total of six days per week. This position was a regular position established pursuant to the requirements of the rules of the Agreement for the purpose of providing a rest day for the employees assigned at the above named locations. The bulletin stated that applications would be received to and including April 3, 1946.

Mr. C. E. Konkel made application for the position and was notified of his assignment on April 8, 1946, and instructed to commence work on the assignment at Crockett on the third shift starting 12:01 A.M., April 12.

On the same day, April 8, 1946, the Chief Dispatcher instructed Mr. Konkel, by wire, to report for extra duty at Houston. Konkel complied with these instructions and commenced work in Houston "CB" Office on April 9, 1946.

The Chief Dispatcher wired Mr. Konkel on April 16, 1946, that his regular assigned rest day relief position was abolished.

be compensated at the time and one-half rate; whereas, if a relief employee were available the services on those days would be compensated for at the straight time rate, thereby avoiding the penalty payments of time and one-half. During the period here involved, and for that matter at the present time, the Carrier was and is experiencing a shortage of qualified telegraphers for the purpose of performing relief work and as a result there were, and still are, many instances where the Carrier has been unable to relieve employees on their assigned rest days necessitating the employees working on their assigned rest days for which the Carrier has, of course, been penalized to the extent of paying such employees at the time and one-half rate.

Rule 3 (e) cannot support this claim as no Trinity-Crockett-Grapeland swing relief position existed during the period April 25 to June 27, 1946. The claimant was assigned to such a position April 8, 1946, but the position was abolished April 16, 1946. The work that was to have been performed by the position was properly assigned to other covered employees in accordance with Section 1 (i) of Article 1 of the Mediation Agreement, Case A-2070, which provides that an employee can be required to work on his rest day.

It is our opinion that any position under the Telegraphers' Agreement may be abolished if the subsisting work is properly assigned to other employees under the same agreement. Konkell was *not*, during the period of this claim, held from a position to which he was assigned as claimed by the Employees, because his assignment terminated with the abolishment of the position on April 16, 1946.

The Carrier believes it has shown that it was not practicable to establish a rest day relief position to protect the relief work here involved, and that, contrary to the contention of the Employees, there was no violation of any agreement with the Telegraphers in discontinuing the relief position in question on April 16, 1946, before claimant or any other telegrapher ever worked the position; and that under the circumstances existing in this case the relief position never was, in fact, established. The carrier knows of no provision in any agreement it has with the Telegraphers that prohibits the discontinuance of a position as was done in the instant case, and in their handling with the Carrier the Employees cited no rule to support such a contention. Therefore, it is the position of the Carrier that the contention and accompanying claim of the Telegraphers is without basis or merit and should be accordingly denied.

The substance of all matters contained in this submission have been the subject or discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced).

OPINION OF BOARD: The Order of Railroad Telegraphers claims Carrier on April 16, 1946, arbitrarily abolished the position of swing relief, Trinity-Crockett-Grapeland, without abolishing the work of the assignment and that doing so was in violation of the provisions of their Agreement with it dated October 15, 1940 and Mediation Agreement A-2070. It asks that C. E. Konkell, who it claims became regularly assigned thereto as of April 25, 1946, be paid for necessary expenses which he has incurred for each day he was held off this assignment and required to work extra on other positions.

It should be borne in mind that Carrier is obligated to do what, by its Agreements, it has contracted to do, although that may not always be the easiest or most economical manner of doing it.

By Mediation Agreement, Case A-2070 of July 13, 1945, Carrier agreed by Article 1, Section 1(b) thereof, that "Regular relief positions shall be created for the purpose of carrying out the rest day provisions in paragraph (a) and shall be bulletined."

It therein qualified this requirement as follows:

"Where it is not practicable, because of number of rest days involved or because of location of positions, to cover all rest days on a seniority district by establishment of regular relief assignment of six (6) days, work on rest days not covered by such assignments may be performed by qualified extra men if available, who will be paid pro rata rates therefor."

There is nothing shown in the record before us that brings this qualification into play as there were six rest days involved and nothing is shown as to their location which would make it impractical to include them in one regular relief assignment.

When the Mediation Agreement, Case A-2070, was entered into it provided by Section 4, in so far as it relates to the question here, that "provisions of the agreement shall be carried out as soon as practicable."

With reference to the establishment of the relief position herein involved, Trinity-Crockett-Grapeland, that was done on March 24, 1946, by Carrier's Bulletin No. 37. Pursuant to his application, Claimant was assigned thereto on April 8, 1946, and advised to report at Crockett on Friday, April 12, 1946, at 12:01 A. M. On April 8, 1946, Carrier directed Claimant to report for extra work at Houston on April 9, 1946, which he did. He continued doing extra work at Houston and other points up to and including June 27, 1946. On April 16, 1946, Carrier acted to abolish the relief assignment to which Claimant had been assigned and never actually placed Claimant thereon.

Rule 14 of the parties' Agreement effective October 15, 1940, provides in part as follows: "Regular assigned employees will not be required to perform relief or extra work except in cases of emergency and when required to perform relief or extra work . . . in all cases they will be allowed actual necessary expenses while away from their regular assigned stations."

Rule 3(e) of the parties' Agreement provides in part: "When an employee bids in a vacancy and is not placed within thirty (30) days he shall be paid . . . resulting necessary expenses for each day held from newly assigned position, in excess of thirty (30) days after position is bulletined."

In view of these provisions Claimant's rights to the claim here made did not begin until 30 days after March 24, 1946, the date of Bulletin 37 establishing the position to which Claimant was assigned on his application.

It is true that Carrier on April 16, 1946 sought to discontinue the position to which Claimant had been assigned but such act was without force or effect as it was contrary to the express provisions of the Mediation Agreement as all six relief days for which the position had been established continued to exist.

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 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 Carrier violated the terms of its Agreement by failing to pay Claimant's expenses incurred during the period from April 25 to June 27, 1946, inclusive, while he was off the regular relief position to which he had been assigned, the amount of which is in the sum of \$189.75.

AWARD

Claim sustained for \$189.75.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.