Award No. 5762
Docket No. TE-5925

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that J. D. Buswell, having been held off of his regular assignment as telegrapher in the Portland, Oregon office, in excess of thirty (30) days, to perform emergency service in the Ogden, Utah, office, is entitled to and shall be compensated in accordance with the provisions of Rule 19 (d)-6 of the prevailing Agreement between the parties, for December 22 and 23, 1948.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employes represented by the petitioner bearing an effective date of December 1, 1944 which agreement (hereinafter referred to as the current agreement), was in effect on the dates involved in the instant claim. A copy of the current agreement is on file with this Board and is hereby made a part of this dispute.

2. The carrier maintains a telegraph office at Ogden, Utah, located at the eastern end of the Salt Lake Division. It also maintains a General Telegraph Office at Portland, Oregon, located at the northern end of the Portland Division. The traveling time between these two points via the carrier's passenger trains requires two days' time.

3. J. D. Buswell, (hereinafter referred to as the claimant), was assigned as Manager-Wire Chief, Ogden, Utah, hours 8 A. M. to 4 P. M., rate of pay, $1.61 per hour. He made application for and was assigned to position of Telegrapher in "DW" General Telegraph Office, Portland, Oregon, hours 3 P. M. to 11 P. M., rate of pay, $1.415 per hour, on the carrier's assignment notice No. 34 dated October 28, 1948. Due to not having a qualified employe to relieve the claimant, he was required to remain as Manager-Wire Chief, Ogden, until relieved at 4 P. M., December 20, 1948, being compensated at the higher rate of $1.61 per hour. He performed no service of his own volition December 21, 1948 and subsequently departed Ogden on carrier's train No. 21 at 7:15 A. M., December 22, arrived at Portland at 6:30 P. M., December 23 and commenced work at Portland at 3:00 P. M., December 24, 1948.

4. Due to not being placed on his newly assigned position within thirty days from date of assignment notice, the claimant was paid $2.00 per calendar day expenses to and including December 20, 1948, as provided for in Rule 19, Section (d), paragraph 6, and was allowed 8 hours' traveling time at

This position of the carrier is fully supported by accepted settlement in claim of Sarah L. Hill, Company file TEL 46-26, which is as follows:

"January 17, 1946

TEL 46-26

"Mr. I. S. Wilson, General Chairman (4)
The Order of Railroad Telegraphers
Pacific Building
San Francisco 3, California

Dear Sir:

"Referring to Case No. 137, listed in your docket of December 10, 1945, as follows:

'12/45-137 TEL 46-26 Claim of Sarah L. Hill, Lakeside, Utah, for $2.00 per day expenses, April 22nd to May 4th, 1945 account not placed on assigned position at Lucin within 30 days.'

which was discussed in conference January 15, 1946.

"Under the circumstances involved in this case, we are agreeable to settling this claim by allowing Telegrapher-Clerk Hill payment for expenses in the amount of $2.00 per day, each day, April 22 (30 days following her assignment to position at Lucin) to May 4, inclusive, 1945 (the latter being the date she was relieved at Lakeside), a total of 13 days.

"If you concur, please so indicate on the space provided in the lower left-hand corner of this letter.

Yours truly,

/s/ G. DeYoung

CONCUR:

(Signed) I. S. Wilson
General Chairman
The Order of Railroad Telegraphers"

In the light of this settlement, carrier, while it has agreed to join in this submission to your Board, is unable to comprehend any necessity for submitting the matter to you for decision, since it is apparent that said settlement clearly evidences the intent of the parties at the time Section (d). 6 of Rule 19 was first negotiated and incorporated into the Telegraphers' Agreement and serves further as a proper interpretation of Section (d). 6.

Carrier submits that the claim in this docket should be denied in its entirety and so respectfully requests of this Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The effective agreement between the parties bears date of December 1, 1944. At issue here is the proper interpretation of Rule 19 (d)-6 relied upon by the Organization and Rule 11 which Respondent asserts is controlling. These rules read as follows:

Rule 19 (d)-6: "A successful applicant shall be placed on his newly assigned position within thirty (30) days from the date of the assignment notice, or be compensated thereafter on the basis of the established rate of either that position or the position on which he

works, whichever rate is the greater, and in addition thereto an expense allowance of two dollars ($2.00) per calendar day."

Rule 11 TRANSFERRING:

"Section (a). Time lost in transferring from one station or position to another (including transfer in the exercise of seniority) shall be paid for at the rate of the position from which transferred, except such time as may be lost of the employe's own accord. Actual time consumed in checking in and out of position shall be paid for at the straight time rate with a minimum of four (4) hours.

"Section (b). An employe transferred by order of the Carrier, or to accept an advertised position, or in the exercise of seniority, or as a result of reduction in force, shall be furnished free transportation for himself, dependent members of his family, and household goods."

This dispute was submitted on a Joint Statement of Facts, of which the following are deemed pertinent:

Claimant, occupying position of Manager-Wire Chief, Ogden, Utah, successfully bid and was assigned to position of Telegrapher, Portland, Oregon, in accordance with the assignment Notice No. 34, dated October 28, 1948.

There being no qualified employe available to succeed him on the Ogden position he was resuired to remain thereon until relieved on December 20, 1948. No service was performed by Claimant the following day. He left Ogden December 22, arriving at Portland December 23.

The Organization contends that under Rule 19 (d)-6 the Claimant was entitled to be granted an expense allowance in the amount of $2.00 on both the 22nd and 23rd of December since he did not commence work until December 24, said last mentioned date being the date on which Claimant was "placed on" his position in Portland.

The Respondent takes the position that inasmuch as the Claimant was transferring from one position to another in the exercise of seniority, any liability for the expense allowance provided under 19 (d)-6 ceased upon the release of the Claimant at Ogden and that Rule 11 is applicable here.

It is clearly evident that Rule 11 applies to all employes who are moved by the Carrier or otherwise change positions (as in the exercise of seniority) irrespective of the time element that may exist in connection with such transfer or movement.

The Claimant here was required by the Carrier to remain on the position he vacated at Ogden for a period in excess of thirty days. On this the parties are in agreement.

The sole issue is whether Rule 19 (d)-6 is effective only to the date of an employe's release from duty or remains operative until said employe assumes the duties of his new position.

No contention is made that Claimant was dilatory in proceeding from Ogden to Portland, so therefore, the Respondent here should have granted the request for expense allowance. It cannot be properly held that an employe is "placed on" a new position simultaneously with his "release" from an old position when the locations of the two positions are, as here, geographically separated to the extent that two days' travel is required to proceed from one to the other.

The Claimant was not "placed on" his new position within the meaning of the rule, that is, 19 (d)-6, until his arrival at Portland.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tumman
Acting Secretary

Dated at Chicago, Illinois, this 14th day of May, 1952.