

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad, that:

The Carrier violates the Agreement when it refuses to pay C. E. Houston, extra telegrapher, the sum of six dollars and sixty-six cents (\$6.66) representing deadhead travelling time from El Reno, Oklahoma, to Elbing, Kansas, at Carrier's direction, May 7, 1953, to protect assignment at Elbing May 8.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. E. Houston, a new employe, after passing physical and qualifying examinations by the Carrier's examiners at division headquarters, El Reno, Oklahoma, on May 7, 1953, was handed transportation together with the following message of instructions, by the Chief Dispatcher on the same day:

"Operator C. E. Houston deadhead El Reno to Elbing No. 510 date relieve F. J. Drum Bold Elbing May 8 F. J. Drum to C. E. Houston temporary account Drum resigned. Jt. All Ack. CD-8-3"

Note: The word "Bold" is Carrier's code word meaning "Transfer station accounts"; "ack" is abbreviation for "acknowledge."

Extra man Houston proceeded to Elbing, 186 miles north, on the train specified and was checked in and assumed the work as agent-telegrapher at Elbing on May 8. He submitted time slip for three hours forty-five minutes at deadhead rate of pay \$1.775 per hour, for the time consumed in travelling to Elbing by timetable schedule of train No. 510, based upon the provisions of Rule 19 (d). Time slip was returned by Superintendent denied. Upon appeal to the highest officer of the Carrier to whom appeal may be made, the claim was denied and it is here presented to your Board for decision.

POSITION OF EMPLOYEES: An agreement is in effect between the parties and bears an effective date of August 1, 1947, amended as to wage rates, etc.

It is the position of the Employees that Mr. Houston, upon completing the necessary employment forms after passing the required examinations, became an extra operator, an employe of Carrier, subject to the direction

will be paid the regular rate of pay of the position filled and will establish a seniority date as of the first date of such service and thereafter be subject to all the provisions of the current Master Agreement." (Emphasis added.)

In handling of this dispute on the property, petitioner relied on Rule 19, paragraph (b) of the current Master Agreement which reads in part:

"This assignment of an extra telegrapher will begin at the time he actually starts to earn pay on such assignment, either deadhead or on the position relieving."

It is the Carrier's position that this rule has no application in this dispute because of the language used in the under-scored part of the rule quoted above from the July 8, 1952 Agreement. It very emphatically sets forth that the provisions of the current Master Agreement have no application until a student telegrapher actually is placed on and assumes a responsibility of a position.

Under the terms of this Agreement, the claimant did not establish a seniority date nor would the provisions of the current Master Agreement apply to him until he actually went to work on May 8, 1953 at Elbing, Kansas.

It is hereby affirmed that all of the foregoing is, in substance, known to the Petitioner and is hereby made a part of the question in dispute.

OPINION OF BOARD: Claimant was employed as a student operator by the Carrier from October 29, 1952 until February 27, 1953, at which time he was released account reduction in force. From February 27 until May 7, 1953, it does not appear that he was in the service of the Carrier. According to Claimant, he took and passed physical and qualifying examinations at division headquarters at El Reno, Oklahoma, as a new employee; he does not state whether he went there on his own initiative or was sent for. Carrier states that on May 7, he was "transferred" to the Southern Division, a different division than that on which he had been employed as a student. Both parties agree, however, that on May 7, Claimant was ordered to deadhead from El Reno to Elbing to fill a temporary vacancy there beginning on May 8; and that he was furnished with transportation to Elbing by the Carrier.

Claimant submitted a time slip for the time spent en route El Reno to Elbing at deadhead rate under Rule 19 of the Telegraphers' Agreement. Carrier refused to pay Claimant for the time spent deadheading and the claim is now before this Board.

Claimant contends that upon being ordered by the Carrier to Elbing, he became an extra telegrapher and subject to the Telegraphers' Agreement under which he is entitled to deadhead pay. Carrier concedes that Claimant became an employe at that time, but argues that he did not become an extra telegrapher until he actually began work as such on May 8. Apparently the matter was argued on these grounds on the property. However, in its submission to the Board, Carrier pointed out the existence of a Student Agreement between the parties, which was executed after the current Master Agreement, and under the terms of which Claimant was originally employed as a student operator. Under this agreement, Carrier argues that the Master Agreement did not apply to Claimant until he began work on May 8, and since his claim for deadhead pay arises entirely out of the Master Agreement, it must be denied.

Claimant objects to the consideration of the Student Agreement since it was not considered during the negotiations on the property. While we regard it as bad practice to rely upon ground before the Board which were not raised on the property, and in some instances have refused to consider them, in this case, where there is no question as to the validity of the Student

Agreement, and it has been discussed fully in submissions, argument and briefs, we do not feel that Claimant is prejudiced by its consideration at this point.

The applicable rules are as follows:

MASTER AGREEMENT—Rule 19

“(b) Extra telegraphers will be assigned in turn according to seniority (not to apply to vacancies of less than six (6) days in relay offices when would necessitate moving men from one office to another). This assignment of an extra telegrapher will begin at the time he actually starts to earn pay on such assignment, either deadhead or on the position relieving. No change will be made after such assignment starts except where it becomes necessary to protect a more urgent assignment for which no other extra telegrapher is available.

* * * *

“(d) Extra telegraphers working on road divisions will be allowed \$1.21 per hour and those working in the relay division \$1.34 per hour, while deadheading on company business. Time will be computed from departing time to arriving time, with the understanding they will not receive for such deadheading an amount to exceed one day's pay of the telegrapher relieved for each twenty-four (24) hours en route, except when two separate and distinct deadhead trips are made in the same twenty-four (24) hour period, each deadhead trip will be computed separately.

“In addition, where train service is not available and extra telegraphers are instructed to use other means of transportation, the carrier will reimburse them for the fare paid or for the use of their privately owned automobile, allowance for the latter to be at the rate per mile paid by the carrier to other employees for similar use.”

Rule 31

“(a) Seniority rights will date from the last time of entering the service and will extend over the districts as they existed on August 1, 1942. These seniority districts will not be disturbed except through negotiations between the management and telegraphers' committee.”

STUDENT AGREEMENT

“This agreement is made to meet the present shortage of train order operators on the carrier's different divisions, and its conditions are as follows:”

* * * *

“Such students shall be given a thorough training in the proper manner and method of handling train orders by telephone and such other station duties as may be required of an agent or operator, and to the end that this may be accomplished the Organization agrees that its members who are agents at various stations which may be selected for such training will give assistance to a student who may be placed at his station so that he may become a qualified employe at the earliest possible date.”

* * * *

“Students will not establish seniority nor will vacation rights be established during the period of training.

"Upon completion of their training and being placed on a position and assuming the responsibilities of that position, a student operator will be paid the regular rate of pay of the position filled and will establish a seniority date as of the first date of such service and thereafter be subject to all the provisions of the current master agreement."

Forgetting for the moment the Student Agreement, we cannot agree that under the Master Agreement Claimant was anything other than an extra telegrapher from the moment he was employed by the Carrier. It was as an extra telegrapher that he was hired and it was as an extra telegrapher that he was given his assignment. Carrier argues that to become an extra telegrapher, an employe must first establish a seniority date as such by actually beginning work on an assignment. We do not agree with this contention. No rule in the agreement so provides. Whether or not Claimant established a seniority date on May 7 may be a serious question for determination in various future situations involving his rights under the agreement. The various awards cited by Carrier dealing with when an assignment begins are examples of such questions. But it is a separate question from whether Claimant was an "extra telegrapher" on that date. Under Rule 19 (d), Claimant was an extra telegrapher deadheading on company business and as such was entitled to deadhead pay. The first sentence of subparagraph (b) does not qualify this in any way. It merely means that any extra telegrapher senior to Claimant had a right to the assignment ahead of him; it is a relative rule, not a requirement that a seniority date must be established before an assignment can be made. Nor does Rule 31 (a) require that a seniority date be established by an employe before any of the rules regarding extra telegraphers are applicable to him.

The remaining question is whether the fact that Claimant received training under the Student Agreement puts him in a situation different from that of a new employe who did not receive such training. The Student Agreement, according to its terms, was made because there was a shortage of and an existing need for train order operators. It contemplated a training program designed to turn out qualified employes "at the earliest possible date." The obvious intent was that as soon as a student was qualified, he would be assigned to a position. On the other hand, the parties were concerned with preserving a distinction between students and regular employes—thus, students acquired no seniority or vacation rights while in training. The necessity to determine, under circumstances where a man might be a student one day and a regular employe the next, just when the change of status occurs, accounts for the language relied upon by the Carrier to defeat the instant claim. In this case, however, Claimant had completed his training a month before; there is no question that when he returned to the service of the Carrier it was as a regular employe. We think that at the moment when he was ordered to deadhead to Elbing to relieve the operator there, he was placed in and assumed the responsibilities of that position within the meaning intended by the Student Agreement. When the phrase "and thereafter be subject to all the provisions of the current master agreement" is read in conjunction with the paragraph preceding the one in which it appears, the intent is shown to be to assure that the employe will thereafter receive the rights specifically denied to him as a student—seniority and vacation rights—rather than to make the establishment of a seniority date a condition precedent to his acquiring any rights under the Master Agreement.

Under the circumstances of this case, we do not think the provisions of the Student Agreement operated to make Claimant's status anything other than that of an extra telegrapher at the time he was ordered to Elbing on May 7. Under Rule 19 (d) of the Master Agreement, he is entitled to the deadhead pay claimed.

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

That the parties waived oral hearing thereon;

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1955.