

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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 terms of the agreement between the parties, when Telegrapher J. C. Millikin was not released from the position of agent-telegrapher at Dilley, Texas, and was denied the right to work his regular assignment as assistant manager of the San Antonio Relay Office during the period December 5, 1951 to January 15, 1952.

(b) The Carrier now be required to compensate J. C. Millikin for the difference between what he actually earned as agent-telegrapher at Dilley, Texas and what he would have earned on his position of assistant manager, San Antonio Relay Office, and in addition thereto actual necessary expenses during the period December 5, 1951 to January 15, 1952.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties bearing effective date of October 15, 1940, revised March 1, 1952, copies of which are on file with your Board.

The following rules concern this dispute:

"RULE 3—SENIORITY, PROMOTION AND BULLETINING OF POSITIONS

(e) Vacancies and new positions will be promptly bulletined to all employees holding seniority on the District on which they occur, bulletin to show location, position, hours of service, and rate of pay. Eligible employees will be given ten (10) days in which to apply for same, and will be notified of assignment within five (5) days after close of bulletin. Such positions will be filled within thirty (30) days from date of bulletin, except as provided in paragraph (h) of this rule. When an employee bids in a vacancy and is not placed within thirty (30) days he shall be paid at the rate of position bid in and resulting necessary expenses for each day held from newly assigned position, in excess of thirty (30) days after position is bulletined. Employees accepting bulletined positions and after a

It is the position of Carrier that the claim as here presented to the Board dating from December 4, 1951 is without basis under the applicable rules of the governing agreement, and that it should accordingly be denied.

The substance of matters contained herein has been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 16, 1951, Carrier bulletined a temporary vacancy in the position of Agent-Telegrapher at Dilley, Texas. The following language appeared in the bulletin as to the reason for and duration of the vacancy:

“(C. J. Jones laying off account illness) Probable duration 30 days or longer, account illness of C. J. Jones.”

The position was bid in by Claimant, who was regularly assigned as telegrapher in “MS” office, San Antonio; he began service on the temporary vacancy on October 26. The temporary vacancy was bulletined and filled in accordance with Rule 3 (h), set out in full in the submission, the pertinent section of which reads:

“Successful applicants under this section will not be permitted to return to their regular positions until the expiration of the time limit specified in the bulletin unless the regular occupant of the position resumes duty prior to the expiration of his leave. Provided that when a permanent vacancy occurs in any position it shall be bulletined as provided in Section (e) of this rule, regardless of any temporary assignments made or bulletins issued.”

Jones, the regular occupant of the Dilley position never did recover from his illness but applied for and was granted a pension under the Railroad Retirement Act because of it. Consequently, the position was bulletined on November 24, 1951 as a permanent vacancy under Rule 3(e) and was awarded to the senior applicant, J. C. Mathis, on December 4. Mathis, however, did not begin work on his new position until January 15, 1952. The delay from December 4 until January 9 was due to Carrier's failure to relieve him on his former position, and from January 9 to January 15 for his own convenience. Claimant was required to remain on the Dilley position until Mathis reported; the claim is for the difference between what Claimant earned at Dilley and what he would have earned on his regular position between December 5 and January 15, plus actual necessary expenses during the same period.

Rule 3 (h) is clear enough as applied to the normal situation of a temporary vacancy caused by an employee's going on leave and returning to his position when his leave expires or prior thereto. In such a situation, the employee who bids in the temporary vacancy must continue to work the temporary position until the regular occupant returns. The difficulty in the case before us is that the regular occupant never did return as contemplated by the rule. We think the intention of the rule is to require an employee who bids in a temporary vacancy to remain there until the expiration of the time specified, or, if the duration is indefinite, until the circumstance causing the vacancy has come to an end. In this case, the duration was indefinite but was specifically related to the illness of Jones. Jones' retirement was due to his illness and the vacancy in his position therefore continued to be related to his illness until it was assigned to Mathis. After that time, the vacancy was not caused by the illness of Jones but by the unavailability of Mathis, which was not a condition affecting the duration of the temporary vacancy at the time it was bid in by Claimant. Under the rule as applied to the particular circumstances of this case, Claimant had the duty to remain on the position at Dilley until it was awarded to Mathis. After that time, he had a right to return to his regular position. He is therefore entitled to be placed in the same position as if he had been so returned, as requested in the claim.

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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October, 1957.