

Award No. 11158

Docket No. TE-9760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway (Chesapeake District), that:

(1) Carrier violated the Agreement between the parties when on July 30, 1956, it permitted S. H. Staab to displace C. H. Billett on third trick "MD" Cabin prior to the date Staab's position as yardmaster was abolished.

(2) Carrier shall now compensate C. H. Billett in the amount of two days' pay account being prematurely and improperly displaced.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

On or about February 1, 1956, S. H. Staab, regularly assigned to the position of third trick operator at "MD" Cabin, (Kentucky) accepted promotion to a position of Yardmaster at Coney, (Kentucky) retaining his seniority under the Telegraphers' Agreement and also the right to return to his position under Rule 21 of the agreement.

The position of third trick operator at "MD" was thereupon bulletined and assigned to Operator C. H. Billett in accordance with the applicable rules of the agreement.

Immediately prior to the time cause for this claim arose, Staab held a regular assignment to the position of third trick Yardmaster at Coney, which was covered by the agreement between this Carrier and the Yardmasters. This position had assigned hours of 11:59 P.M. to 7:59 A.M. and assigned rest days Mondays and Tuesdays. On July 28, 1956, the Carrier issued a notice to the employees affected, declaring the three positions of yardmaster at Coney abolished, effective at 3:00 P.M.,

ing for and making rules to govern telegraphers. However, it should be plain that the Carrier cannot bargain with Telegraphers for Yardmasters, such as would be the case as contended by this claim.

Yardmaster rest days are something which must be bargained for with the duly accredited representatives of the Yardmasters, and to say (as this claim urges) that if a man has worked five days as Yardmaster he must take two yardmaster rest days before returning to the Telegraphers' ranks is plainly not within the province of negotiations between the Carrier and its Telegraphers.

It is conclusive, therefore, that there is no proper basis for the contention in this case that Staab should have been forced by the Carrier to take two rest days or days off as yardmaster before coming back as telegrapher, and in passing from this main question the Carrier calls attention that nowhere in the handling on the property have the Employees contended that there is anything in the Yardmasters' Agreement which requires the taking of two off or rest days under such circumstances. The contention has been entirely on the Telegraphers' Agreement and the understanding dated November 19, 1951. Both, however, fail to provide what is claimed.

Aside from the fundamental issue, the Carrier calls attention to the secondary consideration of what happened to Billett as a result of Staab's return to the Telegraphers' ranks. Billett could have gone to CS Cabin as of August 1, 1956, and displaced there on a higher rated position. However, he did not elect to do this, preferring not to go there until August 8, 1956.

The claim in this case should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about the 16th day of January, 1956, S. H. Staab was promoted to position of Yardmaster, an official or subordinate position. At the time of his promotion, he was the regular assigned occupant of Third Operator position at MD Cabin.

Upon the promotion of Mr. Staab, the Carrier in accordance with the Agreement, advertised the position and C. H. Billett was an applicant therefore and assigned thereto, subject to the contingent rights of Mr. Staab. Mr. Billett continued on the assignment until July 30, 1956, when Carrier permitted Mr. Staab to return to his regular assignment.

Claim was instituted on behalf of Mr. Billett that Carrier violated his rights in permitting Mr. Staab to displace him on July 30 and 31, 1956. It is the contention of the Union that under the provisions of Rule 21 (a), Mr. Staab was not entitled to return to the Third Operator position at

MD Cabin until August 1, 1956, the date Carrier abolished the Yardmaster position held by Mr. Staab, and that Billett should be paid a pro rata day for each of these dates.

The Carrier contends that Staab was released as Yardmaster, effective July 29, 1956, because Saturday and Sunday (July 30 and 31st) were rest days of that position, and, therefore, under the provisions of Rule 21 (a) Staab was entitled to return to his regular telegrapher position as of July 30th.

The parties agree that Rule 21 (a) is the relevant rule. That part here involved reads:

"On and after June 9, 1922, employes filling official positions or subordinate official positions not covered by this agreement, will retain and accumulate seniority rights. If they are closed out or otherwise displaced they shall within thirty days return to the position from which promoted, or go on the extra list with seniority rights unimpaired."

It is the opinion of the Board that August 1, 1956, the date that Carrier abolished the position of Yardmaster, is the controlling date. We have no jurisdiction to construe any Agreement Carrier may have with its Yardmasters. We must, in construing the Telegraphers' Agreement, rely solely on the provisions of the rules of that Agreement. When this is done, it seems very clear, that Rule 21 (a) provided for the return of the promoted official or subordinate official only when the position to which promoted has been abolished or he is otherwise displaced. Since Carrier served notice of the abolishment of the Yardmaster position, held by Mr. Staab, effective August 1, 1956, this is the effective date of his right to return to position at MD Cabin.

We, therefore, find that Carrier erred in permitting Mr. Staab to displace Mr. Billett on July 30 and 31, 1956. 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 Employes involved in this dispute are respectively Carrier and Employes 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1963.