

Award No. 13385
Docket No. TE-12542

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT,
BOSTON & ALBANY DIVISION**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston & Albany Railroad (New York Central Railroad Co. Lessee), that:

The Carrier violated Rule 10 (a) of the parties' Agreement when it failed and refused to pay Relief Agent E. P. Mason a day's pay at the rate of the Agent's position at Spencer, Mass., for transferring station account to incoming agent on February 1, 1960.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective August 1, 1948, and as otherwise amended.

E. P. Mason, claimant, a relief agent, was assigned by the Carrier to perform relief service on the agent's position at Spencer, Mass. Neither the date nor the duration of the assignment is present in the record. However, the facts of record do show, that the relief assignment, at the time assigned, was contemplated to go beyond February 1, 1960. This is evidenced by the Carrier's wire to the claimant dated January 26, 1960, conveying to him the following instructions:

"Cancel previous instructions after Sunday, January 31st.
Livingston returns to work Monday, February 1st. Acknowledge."

The claimant acknowledged the foregoing instructions through the operator at Worcester Station.

Pursuant to the provisions of Rule 10 (a) of the parties' agreement and in keeping with the Carrier's instructions (Accounting Department—Treasurer's Office) related to the transfer of station accounts, claimant reported at Spencer on February 1, for the purpose of transferring station ac-

have been made), it must be borne in mind that such calls, if made, were made contrary to specific instructions by the Carrier. The switchboard operator at Indianapolis who made the call in violation of Carrier's instructions, is also represented by the Brotherhood. It would be a simple enough matter for her to advise the sender of the call that in accordance with the Carrier's instructions she was unable to put the call through and in case of controversy, she would be fully supported by the Carrier since she would be acting in conformity with its directions. Indeed it would be most irregular, in the circumstances of this case, for us to hold the Carrier liable for acts of employees committed in **absolute violation** of its instructions."

Claimant E. P. Mason appeared at Spencer, Mass. on February 1, 1960 in violation of instructions issued by Carrier and acknowledged by him on January 29, 1960.

CONCLUSION:

Carrier submits that the instructions issued to Mr. E. P. Mason were not ambiguous and that Claimant was fully aware of the fact that Carrier had not directed nor authorized Claimant to personally transfer the accounts. The action taken by Claimant was without authority. There was no violation of Rule 10 (a) or any other rule or agreement.

The claim is without merit and should be denied.

OPINION OF BOARD: On or about January 29, 1960, E. P. Mason, a relief agent working at Spencer, Massachusetts, during the absence for illness of regular agent A. M. Livingston, received the following instructions:

"Cancel previous instructions after Sunday, January 31st.
Livingston returns to work Monday, February 1st. Acknowledge."

This message was duly acknowledged through the Operator at Worcester Station.

Mason reported to the Spencer Station on February 1, 1960 and was denied pay for that day by the Carrier giving rise to the instant dispute.

The Organization contends that he acted properly in reporting on February 1, 1960 and should be compensated for that day's work. It argues that the return of Livingston required Mason's presence in order to transfer accounts and in order to give Livingston the new combination for the safe installed during his absence; that replacement of agents must involve the former agent meeting with the new agent; and that such a procedure was anticipated by the parties and is specified in Rule 10 (a) which states in part:

"When station accounts are being transferred from one employee to another, each employee shall be paid the regular daily rate of that station for time required to make necessary transfer, but in no case less than one day. . . ."

If in this case, the Carrier intended that no transferring of accounts would take place, the Organization concludes, it was incumbent upon it to specifically so notify the Claimant, and this it failed to do.

The Carrier contends that Management reserves the right to designate when transfers of accounts are to take place, and that its practice has been to specifically inform incumbents in such events. In this case the practice had been **not** to transfer accounts and when the Claimant reported to work on February 1st, he did so of his own volition and cannot properly claim compensation for his voluntary act. There were other procedures which could have been followed to give him the safe combination, and his presence on February 1st was not necessary.

Rule 10 (a) requires payment of a minimum of a day's pay. "When station accounts are being transferred from one employe to another . . ." There seems little doubt that the transfer of accounts cannot be initiated by the employes themselves but must be dependent upon the Carrier's determination that such a transfer should take place. Thus the fact that the Claimant actually did work on February 1, 1960, is not, per se, conclusive evidence of a transfer unless authority was specifically, or by implication, given to Mason to engage in such a transfer of accounts.

Thus the essential question for determination is whether authority for the transfer was granted. The Organization claims that it must have been, since there had to be an orderly transfer of tickets, money, postage stamps and other valuables at the station as well as the new combination to the safe. Perhaps the Carrier acted imprudently in not specifically providing for such a transfer particularly since it would have run the risk of loss had someone found the combination if left at the station, or the risk of delay, had it been necessary to track down Mason on February 1st, once Livingston reported and could not properly commence his duties. But these potential consequences are not themselves determinative of whether Mason's presence on Monday, February 1st was required.

The Carrier specifically pointed out in its correspondence of March 28, 1960 a statement not contradicted by the Organization:

"Management reserves the right to designate when transfers are being performed to instruct the relief agent to be present when transferring any accounts."

Again in its correspondence of April 4, 1960:

"Further, that Mr. Mason understood, since he has been on the spare list, that it is not necessary to check in or check out of stations unless specifically instructed to do so; and in fact, when he took over the vacancy created by Agent Livingston being off, he was not required to check in."

The conclusion that the Carrier specifically had not intended to have Mr. Mason transfer accounts to Livingston is borne out not only by its practice as evidenced above, but also by the specific language of its instructions to him, wherein they could have cancelled his instructions one day later on February 1st, when Livingston was present. Rather, they specifically ordered the cancellation on January 31st, the day **preceding** Livingston's return.

It is unreasonable to conclude from this evidence that the Carrier intended to have Mason present on February 1st, or that the Carrier's past practice justified Mason's presence on February 1st, unless specifically so

ordered. Indeed it should have been clear to Mason that his presence on February 1, 1960 specifically was **not** required or requested.

Had some robbery or other wrong occurred during the interval, there would have been no grounds for holding Mason responsible. The Carrier would have had to bear the consequences on the basis of its determination not to have Mason carry out a transfer of accounts on February 1, 1960.

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;

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 not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.