

**Award No. 13855**

**Docket No. TE-12735**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Herbert J. Mesigh, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
(Formerly 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 (Pacific Lines), that:

1. The Carrier violates the terms of an agreement between the parties hereto when effective December 11, 1959, it deprived Mrs. Frances I. Marr of the right to perform the work of her regular assigned 3rd shift Telegrapher-Clerk-Towerman's position at Elvas Tower, Sacramento, California.

2. The Carrier shall, because of the violation set out in item 1 of this statement of claim, commencing December 11, 1959, compensate Mrs. Marr for all wages lost, the difference between the rate of pay on positions held subsequent to December 11, 1959, and the rate of pay of the 3rd shift Telegrapher-Clerk-Towerman's position at Elvas Tower, plus actual expenses incurred by reason of the Carrier's improper act, until such time as she is restored to her position. A joint check of the Carrier's records to be made to determine proper compensation.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, including revisions, and as otherwise amended.

Mrs. Frances I. Marr, hereinafter referred to as Claimant, entered the service of Southern Pacific Company, hereinafter referred to as Carrier, on February 28, 1944. Following her employment and in line with the usual practice, she worked on various positions covered by the Telegraphers' agreement as an extra employe. Including in the positions worked were positions involving the operation of interlocked signals and switches. (See page 12 of transcript of hearing — final language on this page.) There is nothing in the

and at second paragraph on page 15:

"... I have a perfect understanding of the layout of the plant and at all times known what I had involved."

In the above quotations of the claimant's testimony, she indicates she knew the plant layout and had previously lined the Placerville Local out properly on each day she worked on the position involved; however, states she should have recognized, but overlooked the fact that the switch control that went into time controlled two signals. All of which indicates that the claimant did not make the proper move, which resulted in the 10-minute delay to the Placerville Local.

At fourth paragraph on Page 5 of Petitioner's General Chairman's letter of May 10, 1960, he comments that the claimant had no way of knowing that the switch lining out the Placerville Local was in improper position until train crew advised her of the situation and that the delay incurred was not excessive. This statement is absurd considering that no delay would have occurred had the claimant followed same procedure of proper operation of the devices she had used on previous days.

Carrier has pointed out that the rules of the current agreement were properly applied in the disqualification of the claimant, and further that as a result of hearing held at the claimant's request, Carrier was just in upholding Carrier's Division Superintendent's decision affirming the claimant's disqualification.

#### CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and asks that if not dismissed, it be denied.

Without in any way receding from its position that the claim presented herein is totally lacking in merit, it will be noted that Petitioner's General Chairman in his letter of May 10, 1960 (see Carrier's Exhibit E), added a note to his statement of claim reading:

"NOTE: The actual number of days involved and the compensation due claimant shall be determined by a joint check of Carrier's records."

In this connection Carrier asserts the need for a joint check of Carrier's records to determine compensation due the claimant is unnecessary as the Carrier is fully capable of furnishing a statement of earnings without a joint check of records by a second party.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On December 11, 1959, Carrier advised Claimant by letter that she was disqualified, effective same date, from working the Telegrapher-Clerk-Towerman position at Elvas, California.

The issue presented here is whether Claimant's rights were violated by the Carrier when it removed and disqualified the Claimant from the third shift Telegrapher-Clerk-Towerman's position at Elvas, California, under Rule 19, Sections (a), (b)1, and 2, and (f), thereby denying the Claimant a right to a hearing as prescribed by Rule 26 — Discipline, Sections (a) and (b)1.

## RULE 19.

## NEW POSITIONS AND VACANCIES

"Section (a). Employees shall be regarded as in line for promotion, advancement depending upon faithful discharge of duties and capacity for increased responsibility. Where ability is sufficient, seniority shall govern.

Section (b). 1. The Carrier, through the proper officer, shall determine the fitness of employees to fill all positions covered by this agreement. Any employee who considers himself unjustly treated under this rule shall have a fair and impartial hearing, provided, written request is presented to his immediate superior within ten (10) days of the date the notice making the assignment to the position is received and the hearing shall be granted within ten (10) days thereafter unless another date is mutually agreed upon.

2. A decision shall be rendered within seven (7) days after completion of hearing. If an appeal is taken as provided in Rule 27, it must be filed with the next higher officer and a copy furnished the officer whose decision is appealed within thirty (30) days after the date the decision is received. The hearing and decision on appeal shall be governed by the above time limits.

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Section (f). If an assigned employee proves incompetent he shall revert to the extra list, retaining his seniority."

## RULE 26. DISCIPLINE

"Section (a). An employee shall not be disciplined or dismissed without a fair and impartial hearing; except that in cases not involving dismissal the employee may waive such hearing. If the employee has been suspended, such hearing shall be held within ten (10) days from the date of suspension, unless otherwise agreed.

Section (b). 1. When hearing is to be held, the employee under charges shall be given written notice, with copy to the Local Chairman of the Organization, as to the time and place thereof, and the specific charge to be investigated, sufficiently in advance to afford him the opportunity to arrange representation and to secure the presence of necessary witnesses. A telegram shall be considered written notice."

The Board finds that the provisions of Rule 19, relied upon by the Carrier, support its position in the instant dispute. Carrier had the responsibility and the right to determine the fitness and ability of the Claimant to fill the position at Elvas and the right to determine competency, once assigned to the position. Once assigned, by Rule 19, Section (f) of the agreement, an employee can be disqualified "if an assigned employee proves incompetent. . . ."

Upon receipt of the disqualification notice, Claimant requested a hearing as provided by Rule 19, Section (b)1. Carrier conformed with Rule 19 (b)2, following the hearing, by properly notifying Claimant that her disqualification was upheld.

We take no issue with the Organization's statement that "various Divisions of the Adjustment Board have consistently held that a person charged with an offense is entitled to know the nature of the charge." But Claimant was not charged with an offense under which she might have been dismissed or discharged from the Carrier's service. The case at hand is not a discipline or dismissal charge but clearly one where the Claimant was disqualified upon the grounds of failure to perform her duties in a satisfactory manner.

Testimony relating to Claimant's unsatisfactory performance of her duties, on five separate occasions, was given at the January 7, 1960 hearing, at which time Claimant was properly represented. Claimant had the burden of proof to rebut Carrier's allegations of incompetency. This she failed to do, therefore, we find no violation of Claimant's rights under the provisions of Rule 19, nor was Carrier's action unreasonable or arbitrary.

Discipline rules were not involved in the disqualification of the Claimant, therefore, Carrier was under no obligation to proceed under Rule 26.

**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 29th day of September 1965.