

Award No. 13985
Docket No. TE-13342

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad Company, that:

1. Block Operator L. W. Kennedy is entitled to receive reimbursement for expenses account being required to use his private automobile to cover assignment at "RH" Block Station during month of January 1959 as provided under Regulation 8-M-1, same having been properly presented on Form G-24A by Claimant.

2. Block Operator L. W. Kennedy is entitled to receive reimbursement for expenses account being required to use his private automobile to cover assignment at "RH" Block Station during the months of February and March 1959, as provided under Regulation 8-M-1, same having been properly presented on Form G-24A by Claimant. (SD-788)

3. Block Operator L. W. Kennedy is entitled to receive reimbursement at "RH" Block Station, Oil City, Pennsylvania, during months of April and May, 1959, as provided under Regulation 8-M-1 of Telegraphers Agreement, these expenses having been properly presented on form G-24A by Claimant. (SD-789)

EMPLOYEES' STATEMENT OF FACTS: As the record will disclose there is an intermixture of two claim files in this docket involving two points at issue, namely:

(a) The arbitrary assignment of Extra Block Operator L. W. Kennedy to the 11:00 P. M. to 7:00 A. M. shift block operator's position at Oil City, Pennsylvania.

(b) His entitlement to car mileage, under the status of an extra employee, for the months of January, February, March April and May, 1959.

The Carrier further submits that obviously the Claimant was so properly assigned as the junior extra man admittedly qualified to perform service at "RH" Block Station. Therefore, his status after such arrangement was that of a regular employe and, as such, he is not entitled to payment of the expenses requested.

On the other hand, it is equally obvious that the Employes have presented no tangible evidence, valid or otherwise, to support their contention that Claimant was improperly assigned. Therefore, they have clearly failed to assume their required burden of proving that the Claimant is entitled to the requested payments. In other words, the Employes have failed to show that the Claimant was improperly assigned under the specifically applicable provisions of Regulation 1-C-1(c) and, therefore, their claim herein is clearly without merit.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division is required by the Railway Labor Act to give effect to the said Agreement, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that Claimant was properly assigned under the provisions of Regulation 1-C-1(c) to a regular position of Block Operator at "RH" Block Station and, therefore, is not entitled to the expenses requested.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: A position of Block Operator was bulletined as a temporary position on January 15, 1959. No bids were received for the position and Claimant was assigned to it on February 2, 1959. There was an Extra Block Operator within the seniority district who was junior to Claimant, but he was not qualified at "RH" Block Station. Claimant was qualified and had been working there at the time of his assignment to "RH."

The claim presented is a request for mileage expense in traveling to and from the assignment for the period January 15, 1959 through May, 1959. It is alleged by Petitioner that Claimant should not have been assigned to this

position, and Carrier, by not assigning the junior Group 2 employee to the position, violated the terms of the applicable agreement between the parties, thereby placing Claimant in the position of being an extra employee entitled to travel expenses.

Rule 1-C-1(c) provides:

"When a Group 2 position, or vacancy in such position, is advertised and no bids are received from qualified Group 2 employees, the junior qualified extra Group 2 employee in the seniority district involved shall be regularly assigned to that position."

It is not disputed that the employee who was junior to Claimant was a Group 2 employee, nor that he would have needed "posting" time to learn the duties and qualify for work at the "RH" Block Station.

We are of the opinion that the language of the quoted rule covers the instant situation. Because it was not disputed that the employee junior to Claimant would need "posting time" to qualify at the "RH" Station, we find Claimant was the junior qualified Group 2 employee as was contemplated by Rule 1-C-1(c). Carrier did not violate the terms of the agreement by assigning Claimant to the position in question.

Previously Carrier had voluntarily paid Claimant travel expenses for a period prior to January 15, 1959. The effective date of Claimant's correct assignment to the position was February 2, 1959. We find that the portion of the claim which is for the period prior to February 2 should be sustained and the portion which is subsequent to that date should be denied.

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 sustained in part and denied in part in accordance with above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1965.