



Award No. 15068

Docket No. TE-12163

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway that:

1. The Carrier violated the parties' Agreement when it failed and refused to pay S. F. Pope, eight (8) hours for August 31, 1959, a calendar day lost when transferring in the exercise of his seniority to the second shift at Longmont, Colorado.
2. The Carrier shall, because of the violation set out above, pay S. F. Pope eight (8) hours at the rate of the first shift position at Longmont, from which he transferred.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective October 1, 1948, including changes and agreed-to interpretations as of the date of reissue, January 1, 1955; with rates of pay effective September 3, 1954, and as otherwise amended.

S. F. Pope, claimant in this dispute, was, prior to August 31, 1959, the regularly assigned occupant of the first shift telegrapher's position at Longmont, Colorado. As such, his assigned hours were 8:00 A. M. to 4:00 P. M. He had a work week of Monday through Friday, with Saturday and Sunday rest days.

In accordance with the provisions of the national Vacation Agreement, the claimant here involved was assigned a vacation period from August 10 through August 30, the latter including the Saturdays and Sundays of the vacation period. He took the vacation as assigned, and was scheduled to protect his first shift assignment at Longmont, commencing on Monday, August 31, 1959.

On August 25, 1959, while the claimant was still on his vacation, though actually not available to the Carrier, the Carrier's Chief Train Dispatcher notified him that effective August 31, 1959, the position of first shift telegrapher at Longmont would be discontinued. At this same time, the Carrier also solicited from the claimant "whom and where he wished to displace."

weekly rest days of the second trick, 4:00 P. M. to midnight, assignment at Longmont were Sunday, August 30, and Monday, August 31, 1959. Relief position No. 5 filled the second trick position on the assigned rest days thereof. Consequently, the claimant assumed the second trick position on September 1, 1959, the first working day of the second trick position after the first trick position was discontinued on August 31. The occupant of Relief position No. 5 worked the second trick position on August 31, strictly in accordance with the assigned work days attaching to Relief position No. 5.

The claimant did not displace the occupant of Relief position No. 5, even though the occupant of Relief position No. 5 was junior to the claimant and could have properly been so displaced had the claimant actually desired to work on Monday, August 31, instead the claimant, of his own volition, displaced the occupant of the second trick Telegrapher position, hours 4:00 P. M. to midnight, work days Tuesday through Saturday, assigned weekly rest days Sunday and Monday, August 31, 1959, the date of the instant claim, was a Monday, thus was one of the assigned rest days of the second trick position. Therefore, it was a work day of Relief position No. 5 and not a work day of the second trick position upon which the claimant chose to displace.

On October 5, 1959, the first trick position at Longmont was restored, retaining the same hours, the same work week, and the same rest days as prior to August 31, 1959. The claimant elected to return thereto in accordance with the provisions of Telegraphers' Rule 20. The claimant worked the second trick position five days, the work week starting Tuesday, September 29, 1959, rested one day, Sunday, October 4, 1959, then re-assumed the first trick position and the conditions thereof on Monday, October 5, 1959, working thereon October 5, 6, 7, 8 and 9, 1959, thus, in effect, gaining one day.

OPINION OF BOARD: On August 25, 1959, Claimant S. F. Pope was notified that his position as first shift telegrapher at Longmont with Saturday and Sunday rest days would be discontinued effective August 31, 1959. Claimant indicated his desire to exercise his seniority on the second shift telegrapher's position at Longmont, with Sunday and Monday rest days. Inasmuch as Monday, August 31, 1959, was a rest day on the position on which Claimant displaced, he lost one calendar day in transferring and hereby seeks recovery of one day's wages.

The Organization contends that under Rule 14 of the parties' Agreement:

"Employees shall be paid eight (8) hours each calendar day for time lost in transferring from one station or position to another at the rate of the position from which transferred, except such time as may be lost of the employee's own accord . . ."

Here, the Organization argues, the Claimant took a job to which entitled by seniority, and was prepared to work on it on August 31st. He should not be penalized for the fact that this was a rest day, and is therefore, entitled to reimbursement for earnings lost.

The Carrier asserts that at the time of transferring, the Claimant had his choice of positions and having chosen one with the knowledge that Monday was its rest day, can not now reasonably claim that the time lost was beyond his control.

The essential question in this case is whether or not the time lost on Monday, August 31, 1959 was lost "of the employee's own accord."

We find that it was not. Claimant was removed from a position on August 31, 1959 by conditions beyond his control. He had a choice of positions available to him by virtue of his seniority, it is true. He took one of these positions as was his entitlement under the parties' agreement. That that position had a rest day on the first day he was to fill it was not a situation of the employee's own making, but merely a facet of the position itself.

To hold as the Carrier urges would mean that to avoid the lost day on August 31, the Claimant would have been restricted in his choice of positions to those working that day. We are unable to conclude that the agreement imposes such a limitation on choice of position at the time of transfer. Claimant began actually working on his new position on September 1, 1959. He should be paid for the preceding day when, due to the transfer, he was unable to work.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1966.