

Award No. 15915
Docket No. TE-14627

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad Company, that:

1. Carrier violated the Agreement between the parties when, during the period November 1 through November 30, 1962, it refused to permit A. E. Cover to work on the position of Agent at East Moline, Illinois.

2. Carrier shall be required to pay A. E. Cover the amount of \$20.24, which represents the difference between what he earned during the period November 1 through November 30, 1962 and what he would have earned during the same period had he been permitted to work on the position of Agent at East Moline, Illinois, as provided in said Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, in effect August 1, 1947 (reprinted to include Interpretations and Special Agreements to November 1, 1956), as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

A. E. Cover is regularly assigned to the position of Ticket Agent at Rock Island, Illinois. This is a seven day position worked by the incumbent six days per week at a monthly rate of \$581.19. The Sunday rest day relief is by a regular relief employee (rest day relief is not involved in this dispute).

Rock Island is located in what is known as the Quad-City Terminal embracing the cities of Rock Island, Moline and East Moline, Illinois, and Davenport, Iowa. Other positions located in the same terminal, all within the same yard limits, are at Silvis, Silvis Yard and West Davenport Tower.

The positions in all of the offices named above are considered as being in the same office under the provisions of Rule 33 (b) 3, the so-called "Ter-

OPINION OF BOARD: The Claimant is the regularly assigned Ticket Agent at Rock Island, Illinois. Rock Island is located in what is known as the Quad-City Terminal, encompassing the cities of Rock Island, Moline, East Moline, Illinois and Davenport, Iowa. Petitioner contends and, indeed, this is not disputed by the Carrier, that the positions in all of the above offices are considered as being within one office in accord with the provisions of Rule 33 (b) 3, the "Terminal" or "Yard Limit" rule. When positions within this complex become available for any reason, the employees may use their "office right" based on seniority to displace when positions are discontinued or step up to available extra work if they so desire.

The Agent at East Moline took a leave of absence due to illness. His position was advertised as a temporary vacancy by bulletin dated November 1, 1962. The vacancy was to be for a period of ninety days. Claimant, armed with the fore-knowledge that the vacancy would occur on November 1, applied to the Chief Dispatcher on October 17, 1962, for the vacated position. His application was refused, the position being filled by an extra telegrapher who was Claimant's junior on the seniority list. The instant claim has been filed for the difference in pay between the positions at Rock Island and East Moline.

Petitioner contends that Carrier's action in this case is a violation of Rule 32 (d), whereas Carrier maintains that this rule is inapplicable to the issue as framed and their decision in this matter was taken strictly in accord with the provisions of Rule 35. We, therefore, have the Claimant invoking one rule, and the Carrier another. The pertinent portion of Rule 32 (d) reads:

"Vacancies of less than sixty days in road division offices where more than one telegrapher is employed may be filled by the telegraphers in that office in accordance with their seniority."

The main thrust of Carrier's argument is that the vacancy in question was for more than sixty days; hence, the above cited rule is not applicable. Petitioner throughout this record steadfastly maintains that the work in question from November 1 to December 1, 1962, was extra work, and not part of the East Moline temporary vacancy, and as such, was "less than sixty days." Petitioner avers, further, that Rule 35 applies to bulletined temporary positions and not to extra work, which they contend is involved in the instant dispute. In furtherance of this position, Petitioner arguing states that the East Moline position was bulletined November 1 as temporary, that is, in excess of 60 days for a period beginning December 1, 1962, the assignment date of the bulletin. They concede that had the Claimant bid on the position and had he been successful, Rule 35 would govern for the period subsequent to December 1, the assignment date. However, the work from November 1 to December 1, 1962, being considered extra work, he should have been permitted to step up to the higher paying position in accord with Rule 32 (d).

The evidence of record reveals that Carrier has allowed this Claimant in the past to do exactly what he requested permission to do in this case. This salient fact has been revealed by the Petitioner, and has not been denied but, indeed, has been affirmed by the Carrier. The existing contract and more specifically the two rules cited by opposing factions in this case, when applied to the facts, is not completely devoid of ambiguity. We must, therefore, con-

sonant with long established principles of this Board, look behind the language of the agreement in an attempt to ascertain the intent of the parties. That can best be established by past practice, which, in this case, favors the Petitioner. We, therefore, agree with the arguments propounded by Petitioner, and affirmatively state that Rule 32 (d) is the applicable rule, that it was violated, and that we shall sustain the claim. (Award 13789, inter alia.)

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.