



Award No. 17149

Docket No. TE-14850

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

UNION PACIFIC RAILROAD COMPANY-EASTERN DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate R. R. VanMeter transfer pay for transferring from Sidney, Nebraska to Julesburg, Colorado on January 1, 1963.

2. Carrier shall compensate R. R. VanMeter in accordance with Rule 15(a), eight (8) hours at the pro rata rate of pay of the position he vacated at Sidney, for transferring to a position at Julesburg, January 1, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1962, as amended and supplemented, is available to your Board and by this reference, is made a part hereof.

R. R. VanMeter, Claimant in this dispute, was regularly assigned to the third shift telegrapher position at Sidney, Nebraska. On February 16, 1962, Mr. VanMeter exercised the option provided in Rule 35 and stepped up to fill a temporary vacancy on the second shift telegrapher-clerk-printer operator position at Sidney and occupied that position from February 16 through December 31, 1962. The rest days of the position of second shift telegrapher-clerk-printer operator at Sidney were Tuesday and Wednesday.

Claimant VanMeter was duly assigned to the bulletined position (by bulletin December 16, 1962) of first trick telegrapher-leverman-clerk-printer operator position at Julesburg, Colorado. The rest days of this position are Monday and Tuesday. VanMeter first worked his assigned position at Julesburg on Wednesday, January 2, 1963 after working at Sidney on Monday, December 31, 1962, and making transfer from Sidney to Julesburg on Tuesday, January 1, 1963. While it in no way affects the merits of this claim, VanMeter also worked the second shift position at Sidney, December 27, 28, 29 and 30, 1962, and, Tuesday, January 1, 1963, was a rest day of both the second shift position at Sidney and the first shift position at Julesburg.

Claimant presented time slips to Chief Dispatcher A. R. Sutherland on Carrier's Form 5037, claiming eight hours pay for transferring per

yond the time limit prescribed in Section (a) of this rule. Rule 11 will not apply, neither will the employe have any claim for guarantee of new assignment."

Mr. VanMeter reported at Julesburg on January 2, 1963, as January 1 was a rest day of the position, and worked his new assignment beginning that day. As a result of this voluntary transfer to accept a bulletined position he worked as follows:

December 27-31—2nd TCPO, Sidney (Thursday-Monday)
January 1—Rest Day (Tuesday)
January 2—1st TLCPO, Julesburg, (Wednesday)

The handling of this dispute on the property is set forth in the following letters between representatives of the Organization and representatives of the Carrier:

Carrier's Exhibit A—Letter dated April 11, 1963 from General Chairman Dent to Carrier's Assistant to Vice President J. T. Singent.

Carrier's Exhibit B—Letter dated May 15, 1963 from Assistant to Vice President Singent to General Chairman Dent.

Carrier's Exhibit C—Letter dated May 21, 1963 from General Chairman Dent to Assistant to Vice President Singent.

Carrier's Exhibit D—Letter dated July 1, 1963 from Assistant to Vice President Singent to General Chairman Dent.

Carrier's Exhibit E—Letter dated July 12, 1963 from General Chairman Dent to Assistant to Vice President Singent.

(Exhibits not reproduced)

OPINION OF BOARD: The question to be determined in this dispute is whether Rule 15 (a) of the Agreement between the parties was intended to compensate an employe in transferring from one position to another when no time was lost in the transfer.

Rule 15 (a) reads as follows:

"Station Transfers—Regular Employees. Regularly assigned employes transferred by order of the Railroad from one station to another, from one position to another, or to accept bulletined position, will be allowed compensation on the basis of eight hours for each day while making transfer, at rate of position vacated."

The facts are not in dispute. Claimant was a regularly assigned employe holding a position at Sidney, Nebraska. He exercised his seniority and bid successfully on a bulletined vacancy in Julesburg, Colorado. He transferred from Sidney to Julesburg on January 1, 1963 which was a rest day of both the Sidney and Julesburg assignments.

Carrier contends that Rule 15 (a) was intended to compensate an employee only if he lost time in making the transfer. The Organization, on the other hand, asserts that since Rule 15 (a) is silent as to lost time,

an employe is entitled to recover whether or not time is lost. As indicated in the record, the rationale behind the Organization's contention is that Rule 15 (a) was originally intended to defray the expense of moving from one position to another.

The language of Rule 15 (a) supports neither position. There is no reference to time lost, nor is there any indication that the rule was intended to defray the expense of transferring.

Without the necessity of citing precedent, it is necessary to apply what has now become a cardinal rule on this Board: Where the language is ambiguous, we must look to the past practice, tradition and custom on the property to determine the intention of the parties. An examination of the record in this dispute clearly indicates that the past practice on this property provided compensation under Rule 15 (a) only when time was lost in making the transfer.

Award 11157, relied upon by both parties, is not inconsistent with this conclusion. A rest day was not involved in that dispute, and the Board properly held that the Agreement was violated when the Claimant was deprived of performing service on the date in question through no fault of his own. The Organization recognized the distinction when it stated in its submission in Award 11157:

"The 17th day of November, 1955, was not a rest day for the position at Pomona; was not a rest day of the position at Mira Loma and was not a recognized holiday."

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.

A W A R D

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1969.

DISSENT TO AWARD 17149, DOCKET TE-14850

This decision provides a perfect example of the error that results when one reasons from a false premise.

The majority quite evidently accepted the Carrier's argument that the question to be resolved turned on whether or not the claimant lost time that he would have worked but for the transfer, even though recognizing that the rule involved has no relation whatever to lost time.

The rule plainly provides a stated measure of compensation for a clearly stated act. The majority quite conveniently refrained from pointing out any ambiguity in the language but, nevertheless proceeded to apply the respectable rule for resolving ambiguities. The error lies in assuming ambiguity when none existed. So, the principle used to defeat the claim was not applicable, making the decision palpably erroneous, therefore, I dissent.

C. E. KIEF
Labor Member