

Award No. 18064
Docket No. TE-18353

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
SOO LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Soo Line Railroad Company, that:

CLAIM NO. 1

(Withdrawn)

CLAIM NO. 2

1. Carrier violated the Agreement when it required and permitted conductor of Train No. 18 to copy Train Order No. 173 at Auburndale, Wisconsin at 10:26 P.M. on January 31, 1968.

2. Carrier shall compensate Telegrapher A. T. Mallek eight hours' pay at the pro rata of the Auburndale rate as shown in the work schedule, plus subsequent increases.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

Since Claim No. 1 has been withdrawn by the Employees, the remarks herein are directed solely to the dispute set out above as Claim No. 2. This dispute is predicated on various provisions of the collective bargaining Agreement entered into by the parties effective July 1, 1956. Claim was submitted to the proper officers of the Carrier at the time and in the usual manner of handling, as required by Agreement rules and applicable provisions of law. It was discussed in conference between representatives of the parties on October 31, 1968.

The controversy arose on January 31, 1968, when the conductor of Train No. 18 was required to copy Train Order No. 173 at Auburndale, Wisconsin. Since February 20, 1963, no telegrapher positions have been maintained at that station.

Employees contended in the handling on the property, and now contend, before the Board, that certain provisions of the collective bargaining Agreement were violated. (These provisions are specifically set out in Section (d)

OPINION OF BOARD: The dispute identified as Claim No. 1 has been withdrawn from consideration of this Board. We are involved only with Claim No. 2.

The issue presented in Claim No. 2 is whether Claimant was an unassigned telegrapher within the purview of the second paragraph of Rule 20.

The primary rule in the construction of contracts is that we must ascertain and give effect to the intention of the parties and that intention is to be deduced from the language employed. In construing a written contract, the words employed are given their ordinary meaning.

In arriving at the intention of the parties, where the contractual language is susceptible of more than one construction it should be construed in the light of the circumstances surrounding them at the time it is made so as to judge the meaning of the words and the correct application of the language of the contract. Mindful of these principles, we have studied Rule 20.

"RULE 20. TRAIN ORDERS

No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed, and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call.

When employes not covered by this agreement handle train orders at points other than referred to in first paragraph of this rule and under conditions other than those enumerated in paragraph (2) of Joint Train Order Agreement (see page 68), senior unassigned telegrapher will be paid one day's pay for each such instance."

The first paragraph of Rule 20 prohibits the handling of train orders by other than telegraphers and dispatchers at offices where an operator is employed. The second paragraph provides for payment to the senior **unassigned** telegrapher when employes not covered by the agreement handle train orders at points where there is no telephone or telegraph office with an operator employed.

The Agreement between the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company and the Order of Railroad Telegraphers is replete with references to distinguish between "assigned" and "unassigned" and/or "extra" employes. Rule 6 provides that in the event a position is abolished or reclassified, the regularly **assigned** incumbent may displace junior regularly **assigned** Telegraphers. If such an employe will not or cannot so displace, he reverts to an extra list or **unassigned** status. Rule 11, Emergency Work, makes provisions for both regular employes taken from their **assigned** positions and extra or **unassigned** employes. Rule 16, Overtime and Calls, contains an exception for employes moving from one assignment to another or to or from an extra list. Rule 22, Relief Work - Deadheading, discusses treatment accorded regularly **assigned** employes required to transfer to and perform relief service on another assignment. Section (B) of that rule states that extra men drawing a position on bulletin will be considered regularly **assigned**. Section (c) provides that the senior idle extra list Telegrapher shall be assigned extra or relief work. Section (d) stipulates that an extra man must complete an assignment before he can be considered available for a new assign-

ment. Section (e) states that extra list Telegraphers will be considered idle upon completion of an assignment. Section (i) establishes that both regular and extra men may be assigned.

Section 1(i) of Rule 27, dealing with the 40-Hour Work Week, defines the work week for both regularly assigned and unassigned employees. This paragraph is of interest because this Board has held that an extra list man relieving on a regular position for five consecutive work days is entitled to the immediately following rest days assigned to that position, and cannot be considered available or unassigned on such days. See Awards 5049, 7174, 9393, 14096, and 16481.

From the text and the context it is clear that unassigned, as opposed to assigned, means one who has no assignment. The Claimant was assigned. The purpose of the second paragraph of Rule 20 is to afford payment to idle or unassigned extra list employees.

As to the past practice arguments, the Board has consistently held that where provisions of an Agreement are clearly unambiguous, they shall prevail over conflicting practices, and either party to the Agreement may insist upon its rights thereunder at any time.

The Board has also held that payments by operating officers are not determinative of the proper interpretation of rules negotiated by others. The preliminary offer of payment by Superintendent Jacobs obviously hinges on the knowledge and final approval of the officer authorized to make and interpret such agreements. Erroneous payments, unknown to the officer authorized to make and interpret agreements, are irrelevant to this case.

Mindful that words in the Agreement are to be given their generally accepted meaning unless specifically defined otherwise, and that Claimant was not an "unassigned telegrapher" on the claim date, we must deny his claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 31st day of July 1970.

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