

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION

SOO LINE RAILROAD COMPANY

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

1. Carrier violated the Agreement between the parties when it improperly compensated Telegrapher A. C. Lee when he was required to work a position not his own.

2. Carrier shall compensate Telegrapher A. C. Lee additional four hours at pro rata rate on each of the following dates: November 20, 21, 22, 24, 27, 28, 29, 30, and December 1, 1967.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated on various provisions of the collective bargaining Agreement, entered into by the parties effective July 1, 1956, and understandings appertaining thereto. 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. The dispute was discussed in conference between representatives of the parties on April 30, 1968.

The controversy arose on December 4, 1967, when the Carrier's Superintendent disallowed the measure of compensation set out in the above Statement of claim.

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) hereof, Rules Relied On.) Carrier contended simply that the Claimant was not entitled to the compensation requested.

(b) ISSUE

Was the claimant properly compensated for service performed at Valley City, North Dakota, on the claim dates?

than Lowry. By highway it is approximately 39 miles more distant. During the period in dispute, there was no relief work available to Mr. Lee any closer to his headquarters. Had he not relieved the Operator at Valley City, he might not have performed any work during this period, and the Valley City Operator would not have been enabled to take his vacation.

Copies of the Rules and Working Conditions Agreement between the parties, effective July 1, 1956, and supplements thereto, are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: On March 2, 1966 the parties entered into an agreement which provided for the consolidation or dualization of various agencies. One provision of such station consolidation agreement was as follows:

"2. Coincident with the abolishment of positions by reason of the consolidations enumerated in Article 1 above, Carrier will establish an equal number of regular relief positions for the purpose of furnishing vacation relief, sick leave, etc."

In accord with such provision the parties on the same date entered into an agreement pertaining to the establishment of the relief positions, which, among other provisions, provided that:

"1. The parties will cooperate in assigning the work of the relief positions to be established."

On March 16, 1966 the Carrier advertised three Vacation Relief Positions designated as V/R No. 1, V/R No. 2 and V/R No. 3. Included in the advertisement was the following:

"The primary purpose of the above positions is to provide vacation relief for present scheduled vacations which of necessity have been rescheduled, however, for the purpose of flexibility the carrier may deviate to extent incumbents of relief positions may be required to protect sick leave and other emergencies in the area so designated."

On November 25, 1966 the Carrier's Superintendent addressed a communication to "ALL AGENTS AND OPERATORS, LOWRY TO HANKINSON TO LIDGERWOOD, INCL. AND F&V LINE" advising them of the vacation schedule for the year 1967 with vacation relief to be provided by Vacation Relief employe No. 1, and which schedule had been prepared in cooperation with the local Organization representative.

On June 1, 1967 the position of Vacation Relief No. 1 was readvertised and Claimant was the successful bidder. Among other things the advertisement included the following:

"The primary purpose of Position V/R No. 1 is to provide vacation relief for present scheduled vacations in this area. However, for the purpose of flexibility the carrier may deviate to the extent incumbents of relief position may be required to protect sick leave the other emergencies in the area so designated. Men bidding on this position must be qualified to handle work at stations in the area covered by the relief position."

The area embraced within the territory in the advertisement bulletin was "Lowry to Lidgerwood, inclusive, and F&V Line."

Because the employee who had been scheduled to be on vacation during the period Nov. 6 to Dec. 1, 1967 exercised seniority to another position outside of the territory covered by Vacation Relief No. 1 prior to his scheduled vacation period there was no need for Vacation Relief Employee No. 1 to provide vacation relief for that employee. There being no other need for the services of Vacation Relief Employee No. 1 he was instructed by Carrier to relieve the Operator at Valley City, N. D., for two weeks' vacation during the period November 20 through December 1, 1967. Valley City was not listed as a location included in the list of locations at which Vacation Relief Employee No. 1 would provide vacation relief, nor was it included in the locations listed to be relieved by Vacation Relief Employees Nos. 2 or 3.

Because Vacation Relief Employee No. 1 was utilized to provide vacation relief at Valley City claim was submitted for time and one-half rate for the days that service was performed at that location under the provisions of Rule 22(a) 1 of the Agreement, which, insofar as here pertinent, reads as follows:

"A regularly assigned employee who is, in an emergency, instructed to leave his assigned position and the city or terminal in which located to perform temporary relief work on another position covered by this agreement will work the hours of service of the position on which relieving with a guarantee of not less than he would have earned (including commissions) had such interruption not taken place. Payment for time worked on the relief position will be at time and one-half rate of the two positions involved * * *.

NOTE: For the sole purpose of applying Rule 22, the term 'in emergency' is defined as follows:

1. Death
2. Sickness
3. Shortage of qualified employees
4. Inability to get extra men to point needed."

We have carefully reviewed the record and are satisfied that it was the intent of the parties to confine the relief work of the regularly assigned vacation relief employees to certain designated locations and areas. Since Valley City was not included as a location nor in an area in which regularly assigned Vacation Relief Employee No. 1 was to provide vacation relief his use at that location constituted a violation of the Agreement.

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.