NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20122
THIRD DIVISION Docket Number CL-20156

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7262) that:

1. Carrier violated the Telegraphers' Agreement (TCU) and in particular, Rule 22, Paragraph (f), when it failed to allow or permit Telegrapher E. L. Jackson to displace junior extra Telegrapher Sinningson on the wing position, Valley Junction, Texas, beginning 12:01 AM, Thursday, August 5, 1971.

2. Carrier shall now be required to compensate Telegrapher E. J. Jackson eight (8) hours' pay at straight time rate of the third trick Telegrapher position at Valley Junction, for Thursday, August 5, 1971.

OPINION OF BOARD: Claimant, an Extra Telegrapher, completed an assignment at Valley Junction, Texas on Friday, July 30, 1971. After a telephone conversation with his supervisor at Palestine, Texas, Claimant went on lay-off. On Tuesday, August 3, 1971 Claimant dispatched a telegraph message to Palestine advising that he would displace a junior employee at Valley Junction at 12:01 A.M. on August 5th. The message was addressed to the Chief Dispatcher, the Car Distributor and the District Chairman and was received at the Palestine telegraph office at 5:09 P.M. August 3rd. The pertinent rule is Rule 22 (f) which provides as follows:

> "(f) At least twenty-four (24) hours notice shall be given to the Supervising Officer before an employee who is laying off or on leave of absence will be permitted to return to duty."

The Car Distributor, an employee covered by the Agreement who handles certain personnel matters in behalf of the Chief Dispatcher, had completed his work at 3:00 P.M. on August 3rd and did not receive the message till his return to work on August 4th at 7:00 A.M. The Supervisor denied the Claimant permission to displace the junior extra telegrapher until 12:01 A.M. August 6, 1971 based on alleged insufficient notice. Carrier claimed that the seventeen hours of effective notice was not enough time to give the telegrapher being displaced sufficient notice. The Palestine station is operated seven days per week around the clock.

Carrier maintains that the Car Distributor was the "Supervising Officer" designated by Carrier and the effective recipient of notices under Rule 22 (f); the Car Distributor did not receive the requisite twenty four

hours notice under the rule. Petitioner claims that the proper "Supervising Officer" was the Chief Dispatcher. Although we concur in Carrier's position that it has the right to designate anyone it wishes as its representative, we do not believe that this disputed issue is relevant since the telegram from Claimant was addressed to both men in question and Carrier denies that either one recieved the message with the required number of hours notice.

Carrier also argues that Claimant could have telephoned the Supervising Officer rather than send a wire. The Petitioner argues, and it is not denied, that telegraphers desiring to displace have historically and customarily for many years given notice by telegram under Rule 22 (f). Carrier also on the property repeatedly contended that the notice given was not sufficient for it to notify the employe being displaced. We find nothing in the Rules specifying required notice to an employe being displaced.

The dispute in this matter essentially is whether Claimant gave thirty hours notice or seventeen. If we accept Carrier's position Rule 22(f) would be modified to define notice as that which is either delivered during the Supervising Officer's regular working hours or received in person. Such a construction might under many circumstances require as much as seventy two hours prior notice. Although we sympathize with Carrier's position, the clear language of the rule does not specify the "receiving" of notice, but rather the "giving" of such notice. Particularly in view of the seven day three shift operation we find that Claimant properly fulfilled the requirements of the rule when he "gave" thirty hours notice of his intention to displace, by telegram.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January 1974.