

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD**

DISPUTE.—

"J. M. Olson claims eight hours, or a minimum day's pay, at first assistant chief operator's rate, calendar day lost transferring, August 3, 1934."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Willard E. Hotchkiss was called in as Referee to sit with the Division as a member thereof.

The parties have jointly certified to the following facts and the Third Division so finds:

"Telegrapher Olson, regularly assigned, Seattle Relay Office, filling temporary vacancy as first assistant chief operator, 4:00 P. M. to 12 midnight, was notified by chief operator August 2 that following completion of tour of duty on that date he would be displaced by first assistant chief operator reporting for work.

"In accordance with seniority, Mr. Olson displaced second assistant chief operator, 12 midnight to 8:00 A. M., resuming service on that position, August 4.

"The subject matter of dispute is that Telegrapher Olson maintains he would be entitled to payment for calendar day lost transferring from first assistant chief operator position, 4:00 P. M. to 12 midnight, not performing service August 3, working on second assistant chief operator position 12 midnight to 8:00 A. M., August 4.

"The Carrier holds that the principle of being penalized resulting from the exercise of seniority was never contemplated when there was the opportunity for an employee to accept service without loss of time."

Olson performed service for a period of eight hours, 4:00 P. M. to 12 midnight, on August 2. Had he assumed the duties of the second assistant chief operator on August 3, it would have been necessary for him to continue in service from 12 midnight until 8:00 A. M. This would have meant continuous service for a period of 16 hours, which the employee felt he should not be required to perform in order to avoid payment for a day lost in transferring. Olson lost one day's pay in making this transfer and claim for same is filed under Rule 15 (a) of the Schedule Agreement, reading:

"(a) Employees will be paid the regular rate of pay of the position where they are relieving, except as otherwise provided in this Rule, and will be paid full time (eight (8) hours for each calendar day), for time lost in transferring from one position to another."

The petitioner maintains that the work in connection with position in question was of a strenuous and exacting nature, and that continuing to perform service of this character for a period of sixteen (16) consecutive hours, Olson would have subjected himself to strain on his health, with resulting liability of making errors.

The Referee finds no specific provision in the Agreement under which an employee may elect to perform service or not to perform it and then claim compensation for time lost in transfer. On the other hand, the Management clearly has an obligation to exercise judgment as to the conditions under which service should be demanded.

Cases are likely to arise under Labor Agreements which can only be handled on their individual merits and when so handled should not be regarded as creating precedents for subsequent cases or as changing the Agreement in question. The Referee finds that the case before the Board is a case of this sort. In the absence of a specific rule an equitable compromise adjustment is in order.

AWARD

Case is remanded to the parties for settlement in accordance with the above findings.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 2nd day of June 1936.