

Award No. 732
Docket No. TE-741

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. De Vane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC,

THE CHICAGO, ROCK ISLAND AND GULF RAILWAYS
(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island & Pacific Railway that H. L. Jones be reimbursed under Rule 19-(f) for the period May 10th to June 8th, 1937, inclusive, but exclusive of holidays and Sundays, because during that period he was required by the Carrier to work extra in Cedar Rapids office while he was entitled to a regular position in Chicago office."

EMPLOYES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers has an agreement with the Chicago, Rock Island and Pacific; the Chicago, Rock Island and Gulf Railway Companies dated January 1, 1928, copies of which have been furnished to the Board. On page 23 of this agreement under the caption 'offices under jurisdiction of Superintendent of Telegraph' will be found the names of the offices figuring in this dispute. May 6th, 1937, telegrapher H. L. Jones was regularly assigned to a straight morse telegraph position in the Fairbury, Neb., relay office, which is under the jurisdiction of the Superintendent of Telegraph, and on the same date Telegrapher R. A. Garrett Jones' senior, was assigned to a straight morse telegraph job in the Cedar Rapids, Iowa, relay office also under the jurisdiction of the Superintendent of Telegraph. On this date instructions were issued by the superintendent to the effect that, on account of the installation of a printer type telegraph machine in the Cedar Rapids office, and which was ready for service, one morse telegraph job would be abolished May 7th. Telegrapher Garrett being the junior telegrapher in that office, and not qualified to work the printer machine, was notified that his displacement was telegrapher Jones at Fairbury. On May 7th, the Superintendent of Telegraph, through the relay office Manager at Fairbury, notified telegrapher Jones to report at Cedar Rapids Monday, May 10th, 1937, for duty as combination morse-printer operator, which instructions were obeyed by Jones and he protected the morse printer work in the Cedar Rapids office for twenty-six days thereafter."

CARRIER'S STATEMENT OF FACTS: "Telegrapher H. L. Jones, division seniority date September 16, 1922, was working as a telegrapher in our relay telegraph office at Fairbury, Nebraska, and was on May 8, 1937, displaced by a senior telegrapher, R. A. Garrett, division seniority date September 24, 1919. Mr. Jones did not indicate he desired to displace any junior telegrapher then working and, therefore, reverted to the relay extra list. There was a vacancy for a combination Morse-Printer Operator position in

tions were established in relay offices, same would be filled by competent extra men during period from July 31, 1936 to July 1, 1937, and such permanent positions as remained on and after July 1, 1937, would be bulletined in the customary manner and assignments made in accordance with office seniority. It was necessary to fill this combination position at Cedar Rapids, being one established during the period indicated, from the extra board, and Mr. Jones, being the senior qualified Morse-Printer Operator then out of employment was entitled to the work and he was, therefore, notified that the position was vacant and reported for same and filled the position until June 8, 1937, when he elected to take a vacancy as Late Night Chief in the relay office at Goodland, Kansas, to which position he was assigned effective June 13, 1937, on Bulletin No. 579.

"The claim is for extra compensation at the rate of \$2.00 because the claimant worked at a job which paid 77¢ per hour, he claiming he was entitled to work at a job which paid 63¢ per hour. Thus, he wants \$2.00 a day extra for earning 14¢ per hour more than the job paid to which he claims he was entitled.

"Further, of course, he was not entitled to the job in Chicago unless he asked for it. This he did not do.

"Article 19 (f) of the present telegraphers' Agreement of January 1, 1928, provides when regularly assigned telegraphers are required to perform relief work they will be allowed \$2.00 per day for expenses while away from their regular assigned station. Mr. Jones did not have a regular assignment between period of May 10 and June 8, 1937, but was working as an extra combination Morse-Printer Operator (Telegrapher) and, therefore, was not entitled to expenses. His service at Cedar Rapids was not emergency service—it was the performance of regular extra service, in accordance with the terms of the agreements negotiated with the representative of the telegraphers."

OPINION OF BOARD: The facts in this case, about which there is no serious disagreement may be briefly summarized as follows: On May 6, 1937, instructions were issued by the carrier that on account of the installation of a printer type telegraph machine in the Cedar Rapids, Iowa, office, and which was ready for service, one Morse telegraph job in that office would be abolished effective May 7th. Telegrapher Garrett being the junior telegrapher in that office and not qualified to operate the printer machine thereby lost his job in the Cedar Rapids office. He was notified that his displacement was Telegrapher H. L. Jones at Fairbury, Neb., which right he exercised on that day. Jones, being a qualified combination Morse-printer operator, was instructed by the carrier to protect the new position in the Cedar Rapids relay office beginning Monday, May 10, 1937, which instructions were obeyed and he performed the Morse-printer work in the Cedar Rapids office for 26 days thereafter.

The General Committee is here asking that Jones be allowed \$2.00 per day for expenses while he filled the combination position in the Cedar Rapids office on the ground that he was taken from a regular assignment and required by the carrier to perform relief work in emergency as contemplated by Article 19 (f) of the agreement between the parties.

Telegrapher Jones had held a regularly assigned position in the relay office at Fairbury, Neb., for some time prior to his displacement by Garrett and he had some doubt as to Garrett's right to displace him. Acting upon this belief, on May 22, 1937, he filed a complaint regarding such displacement. On investigation it was found that Garrett had displacement rights over Jones but it was the opinion of the General Committee that the Carrier had violated the agreement in not paying Jones \$2.00 per day for expenses while he filled the combination position at Cedar Rapids. Upon being advised of this fact Jones, under date of March 1, 1938, notified the committee by

letter that he considered the carrier acted within its rights, had not violated the Telegraphers' Agreement, and that he did not desire any further consideration of this matter in his behalf. The Committee refused to accede to Jones' request and brought the case to this Board. A copy of Jones' letter was sent to an official of the Carrier and was incorporated in the record in the case.

The Carrier insists that by reason of this attempted withdrawal of the case by the employe from the General Committee the case is not properly before the Board.

A similar question, but under somewhat different circumstances, was recently before this Division in Docket TE-543, Award 524. In that case the employe, while performing relief work, was assigned to a regularly assigned position at another location. However, he was permitted to continue for a time on the relief position upon request of the employe and waiver by him of the penalty provisions of the agreement. The Board held the employe did not have authority to waive the penalty provisions of the agreement and sustained the claim of the General Committee that the Carrier had violated the terms of the agreement. However, Carrier insists that the question there decided is not the same as the question raised in this case. Article 23 of the agreement is as follows:

"The foregoing rules and rates of pay constitute in their entirety, the agreement between these railways and their telegraphers. No departure from them shall be made by any of the parties hereto except after thirty (30) days' notice of such desire, in writing, has been served upon the other party hereto."

The agreement is executed for the Telegraphers by the General Chairman and General Secretary and Treasurer. It is in every respect a collective bargaining agreement. The right to make such agreements is now well established. Recent decisions of the Supreme Court (See *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 58 Sup. Ct. Rep. 571; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 58 Sup. Ct. Rep. 577; *National Labor Relations Board v. Mackay Radio and Tel. Co.*, 58 Sup. Ct. Rep. 904) fully recognize this right.

The right to bargain collectively carries with it the right of group representation, otherwise the benefits of collective bargaining could never be realized, and to concede to an individual employee covered by a collective bargaining agreement the right to change, modify, waive or invalidate any of the provisions of such an agreement would defeat the very purpose of collective bargaining. Moreover, to recognize any such right in cases like the instant case would give to the employer a power he should not possess if we are to have collective bargaining (See cases cited above). It should be stated in this connection, however, that the record in the instant case contains no evidence showing that any pressure whatever was brought to bear upon the employe by his employer to induce him to withdraw this claim.

The Board finds that the existing agreement between the parties cannot be changed or modified or any of its provisions waived except in the manner provided therein or by mutual agreement between the parties who negotiated and executed the same or their duly authorized agents or representatives. The Board holds, therefore, that the General Committee has the authority to bring this case before it.

As stated earlier in this opinion, Jones, the regularly assigned Telegrapher at Fairbury, Neb., was displaced on May 7, 1937, by senior Telegrapher Garrett. Jones held a displacement to a printer-machine operator position at Chicago. The General Committee contends that he should be regarded as occupying that position and required by the Carrier to perform relief work in emergency as contemplated by Article 19 (f) when ordered to protect the combination position at Cedar Rapids.

Under the rules, Jones had ten days in which to exercise his option to make a displacement or go to the extra board. He had no regularly assigned position at the time he was ordered to protect the Cedar Rapids position. Although he held certain displacement rights and was aware of that fact the record does not show that he knew where they were. When Jones received this order to report to Cedar Rapids to protect the printer position there he obeyed instructions. The Committee strongly urge that the duty devolved upon the carrier to inform Jones where he might make a displacement following his displacement by Garrett at Fairbury. They assert that this failure of the Carrier to so notify Jones coupled with the order to Jones to report to Cedar Rapids to protect the printer position there brings this case within Article 19 (f) of the Agreement. The Board does not think so. Even conceding that the duty devolved upon the carrier to inform Jones where he might make a displacement, nevertheless Jones was fully aware of his rights in the premises. He had ten days in which to decide whether he would exercise his displacement rights or go to the extra board during which time he could not be required to accept a regularly assigned position. He held no regularly assigned position at the time and had he desired a permanent assignment instead of the Cedar Rapids position he could have inquired as to his displacement rights as Garrett did. Article 19 (f) provides:

"Regularly assigned telegraphers will not be required to perform relief work except in cases of emergency, and when required to perform relief work, and in consequence thereof, suffer a reduction in their regular compensation, shall be paid an amount sufficient to reimburse them for such loss, and in all cases they will be allowed two dollars (\$2.00) per day for expenses while away from their regular assigned station."

The Board is asked to indulge in too much speculation where it is asked to assume that Jones would have accepted the printer machine operator position at Chicago had he been advised as to his displacement rights with reference to this position. Yet only by indulging in such speculation can this claim be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the Carrier and the employe involved in this dispute are respectively Carrier and employe 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 between the parties has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of October, 1938.