

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that when the third trick telegraph position at Kuttawa, Kentucky, was reopened January 20, 1940, after having been discontinued less than ninety (90) days, the formerly regularly assigned incumbent thereof, T. H. Cash, should have been permitted to return thereto, and that since he was denied this right, he shall be paid the difference between what he earned at Blackford, Kentucky, and what he would have earned at Kuttawa from January 20, 1940, to March 3, 1940, inclusive, and, in addition, shall be allowed under Rule 30 of the telegraphers' agreement, \$2.00 a day for each of the days he was required to work at Blackford, while the third trick position at Kuttawa to which he was properly entitled, was opened as mentioned herein."

JOINT STATEMENT OF FACTS: "An agreement bearing date of August 1, 1937, as to rates, and June 1, 1939, as to rules of working conditions is in effect between the parties to this dispute.

"The third trick telegraph position at Kuttawa involved in this dispute is covered by said agreement and at the rate of seventy-four (74) cents per hour. The second trick telegraph position at Blackford, also involved in this dispute, is likewise covered by said agreement and at the rate of seventy-three (73) cents per hour.

"T. H. Cash, in whose behalf this claim is made, was the regularly assigned incumbent of the third trick telegraph position at Kuttawa when the position was abolished at 8:00 A. M. on November 12, 1939. On Vacancy Bulletin closing at midnight November 12, 1939, Cash made application for the second trick telegraph position at Blackford and was assigned to this position as the successful applicant on November 13, 1939.

"Effective January 20, 1940, the third trick position at Kuttawa was reopened. Article 14, Rule 41-(d)-(II), of the telegraphers' agreement provides:

'When positions are abolished and reopened within ninety (90) days, displaced employes shall have the privilege of returning to former positions.'

"On January 23, 1940, Cash requested he be returned to the third trick position at Kuttawa, which request was declined."

POSITION OF EMPLOYEES: "The main facts in the case are as stated in our claim and in the joint statement of facts.

"Prior to November 12, 1939, Telegrapher Cash was regularly assigned to the third trick telegraph position at Kuttawa and at the rate of 74 cents per hour. He maintained his home at Eddyville, one and six-tenths (1.6) miles from Kuttawa. On reporting for duty on the night of November 11, 1939,

- "2. That Cash did bid for and was assigned a regularly assigned position which in effect nullified his right to return to the Kuttawa position under any circumstances except under the bid and assignment rule of the agreement so long as he maintained the status of a regularly assigned operator.
- "3. That Cash was not performing relief work at Blackford and is not entitled to the \$2.00 per day allowance under the rule concerned.
- "4. That the granting of the employees' request would be an infringement under the provisions of the present contract on the extra men's rights and would be definitely in violation of the provisions of the contract providing for the assignment of extra men to extra work such as we had at Kuttawa.
- "5. That the granting of this claim would in effect write a new rule and that such action is not the responsibility of your Board.
- "6. None of the rules of the agreement have been violated in the handling given this case. On the contrary, the actions of the representatives of the carrier were strictly in accordance with the provisions of the schedule and the carrier therefore requests that the claim be declined without qualification."

OPINION OF BOARD: There is no dispute in the facts. T. H. Cash was the regularly assigned incumbent of the third trick telegraph position at Kuttawa, Ky. when the position was abolished at 8:00 A. M., Nov. 12, 1939. He made application for the second trick telegraph position at Blackford which was, at that time, on bulletin and was assigned to that position as the successful applicant on Nov. 13, 1939.

Effective Jan. 20, 1940 the third trick telegraph position at Kuttawa was re-opened and on Jan. 23, 1940 Cash requested to be returned to this position in accordance with Article 14, Rule 41, Section (d), Paragraph 2 of the Agreement between the Illinois Central Railroad Company, the carrier involved, and the Order of Railroad Telegraphers. Article 14, Rule 41, Section (d), Paragraph 2 is as follows:

"When positions are abolished and re-opened within ninety (90) days, displaced employees shall have the privilege of returning to former positions."

Cash's request to be returned to his former position was denied. It is the contention of the carrier that Cash had certain rights under Rule 41 (d) (I) of the contract, none of which he exercised but instead bid for and was assigned a regular position; this nullified his right to return to the Kuttawa position.

The language of Rule 41 (d) (II) clearly provides that "When positions are abolished and re-opened within ninety (90) days, displaced employees shall have the privilege of returning to former positions." The Rule makes no distinction as to whether the re-opening is temporary or permanent. There is nothing in the Rule restricting its application to displaced employees who, in the meantime, have bid in some other position. It clearly states that they are entitled to return to their former position if it is re-opened within 90 days. Cash had the privilege of returning to his former position if he so desired, it having been re-opened within 90 days from the date abolished.

It will be noted that the Rule gave to Cash the privilege of returning to Kuttawa. He exercised this privilege by notifying the carrier on Jan. 23, 1940 of his desire to be returned to his former position. On Jan. 24, the carrier refused his request. In doing so the Agreement was violated.

The employees also contend that since the position belonged to Cash and, he was required to work at Blackford, he was in the status of being regularly assigned to Kuttawa and required to perform relief work at Blackford for the duration of time that the Kuttawa position was open, and therefore entitled to the benefits provided under Rule 30.

The record shows that Cash maintained a home near Kuttawa where he resided with his family; that Blackford is approximately 45 miles from Kuttawa and that he was put to the additional expense of renting quarters for himself at Blackford. Rule 30 of the Agreement is as follows:

"Regular assigned employees who are required to perform relief work and in consequence thereof suffer a reduction in their regular compensation, will be paid an amount sufficient to reimburse them for such loss, and in all cases will be allowed two (2) dollars per day for expenses while away from their regular assigned stations."

Cash, under Rule 41 (d) (II), was entitled to return to his former position if he desired. He made application to return to Kuttawa on the 23rd of January, 1940, which was denied. The position at Kuttawa was rightfully his and as he was required to perform services away from the position to which he was entitled, under the provisions of Rule 30, he is entitled to \$2.00 per day from the date his request was declined, which was Jan. 24, 1940 up until the time the Kuttawa office was closed, which was March 3, 1940.

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 action of the carrier in the instant case violated the terms of the prevailing Telegraphers' Agreement.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1941.

Dissent to Award No. 1439, Docket No. TE-1507

During the period of this claim, Mr. Cash occupied a regular assignment, which he applied for and obtained through bulletin and assignment.

The fact that he was denied permission to leave his assignment and return to a temporarily re-opened position, due to disagreement between the parties as to the meaning and intent of negotiated rules, does not establish that he was performing relief work, as contemplated by rule 30.

The purpose of rule 30 is to reimburse regular assigned employees who are used on relief work, i. e., to fill positions of employees temporarily absent.

Under the facts of this case, we are of the opinion the award errs in holding claimant was in effect doing relief work from January to March, 1940 and in holding that rule 30 is applicable.

S/ R. H. ALLISON
S/ C. C. COOK
S/ A. H. JONES
S/ R. F. RAY
S/ C. P. DUGAN