

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul W. Richards, 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 Illinois Central Railroad, that R. F. Cocke is entitled under Rule 55 of the Telegraphers' agreement to one day's pay he lost on October 4, 1939, to avoid violation of the Federal Hours of Service Act when transferred from a regularly assigned position he held as third trick operator at Dawson Springs, Kentucky, to accept a position he secured on bulletin as agent-operator at Ripley, Tennessee."

JOINT STATEMENT OF FACTS: "The position of third trick operator at Dawson Springs, Kentucky, and the position of agent-operator at Ripley, Tennessee, are covered by an agreement bearing date of August 1, 1937, as to rates of pay, and June 1, 1939, as to rules and working conditions in effect between the parties to this dispute.

"Prior to October 3, 1939, while regularly assigned to the third trick operator's position at Dawson Springs, Kentucky, hours 11:00 P. M. to 7:00 A. M., telegrapher R. F. Cocke bid on and was awarded the bulletined position of agent-operator at Ripley, Tennessee. He last worked on the third trick position at Dawson Springs on October 3, 1939, completing this assignment at 7:00 A. M., October 4, 1939. He commenced work at Ripley, Tennessee, 8:30 A. M., October 5, 1939."

POSITION OF EMPLOYEES: "While regularly assigned to the third trick operator position at Dawson Springs, Kentucky, Telegrapher R. F. Cocke bid on and was assigned to the bulletined vacancy on the position of agent-operator at Ripley, Tennessee, located on the same Kentucky operating division. The bulletin advertising the vacancy at Ripley was dated August 21, 1939. Telegrapher Cocke made written application for the vacancy, and on September 23, 1939, was advised he was the successful applicant and was asked if he would accept the position. He replied immediately stating he would accept the position, and within a few days was informed by railroad message that he would be relieved at Dawson Springs on the morning of October 4, 1939, on completion of his third trick position which began on October 3, and was instructed to report at Ripley on October 5 to begin work on the agent-operator position.

"The assigned hours of duty on the third trick operator position at Dawson Springs on which Telegrapher Cocke was regularly assigned prior to being assigned to the agent-operator position at Ripley were 11:00 P. M. to 7:00 A. M. The hours of the agent-operator position at Ripley were 8:30 A. M. to 5:30 P. M.

duty in violation of the second section hereof shall be liable to a penalty of not less than \$100 nor more than \$500 for each and every violation, . . .'

"The proper observance and compliance with the Federal Hours of Service Act rests not only upon the carrier but on the employes as well. Section 1 of the Act reads in part:

'That the provisions of this Act shall apply to any common carrier or carriers, their officers, agents, and **employes**, engaged in the transportation of passengers or property by railroad in the District of Columbia or any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.'

"In prosecuting this claim the employes are attempting to force the carrier to violate the Federal Act by permitting, or rather requiring, the employe to remain in service sixteen hours within a twenty-four hour period. The sustaining of this claim would without question force the carrier to violate the Federal Hours of Service Act each time a case of this kind arose. The carrier, however, does not anticipate a decision of that kind. The carrier well knows that the employes assertions and contention will not mislead the members of the Board who are well versed in matters of this kind and whose knowledge of contracts and the provisions of the Hours of Service Act will serve them well when rendering a decision in this case, and it will not be their purpose to compel the carrier to directly violate the Act.

"The purpose and intent of the Hours of Service Act was to promote the safety of employes and travelers upon railroads by limiting the hours of service of employes thereon. A favorable award in this case would be in contravention of and defeat the purpose of this Act.

"In brief, the facts and circumstances in this case resolve themselves into a simple solution. Under the Hours of Service Act the employe could not, without violating that Act, start on a second eight-hour assignment within the same twenty-four hour period. Therefore, under the provisions of Rule 12—the Guarantee Rule—he was not 'ready for service' and not being ready for service, he was not entitled to a day's pay as provided for in that rule. Not being entitled to a day's pay he suffered no loss of pay and the provisions of Rule 55 are not applicable in the case.

"No violation of the contract is evident; on the contrary, the facts of record show that the provisions of the contract, as well as the provisions of the Hours of Service Act, were complied with, and the carrier therefore requests that the claim be denied, without qualifications."

OPINION OF BOARD: The claim is that one day's pay is due R. F. Cocke by reason of the agreement contained in Rule 55, which reads:

"Employes transferred by order of the Railroad, or to accept bulletined positions, will be furnished with free transportation for themselves, their families and household goods, and will suffer no loss of pay."

Admittedly this employe was transferred from Dawson Springs, Kentucky, to Ripley, Tennessee, to accept a bulletined position and suffered loss of pay for October 4, 1939, and his non-working on October 4, 1939, and resulting loss of pay for that day, was something without which the transferring could not have been accomplished, without violating the Federal Hours of Service Law.

The carrier urges that, despite the provisions of Rule 55, this employe suffered no recoverable loss of pay because of Rule 12, which reads:

"Regularly assigned employees will receive one (1) day's pay within each twenty-four (24) hours, according to location occupied or to which entitled if ready for service and not used, or if required to be on duty less than the required minimum number of hours as per location, except on relief days and holidays.

"This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

Relying on Rule 12, the carrier's argument is that the day's pay in dispute is not recoverable because (a) we must go to Rule 12 to ascertain whether he was entitled to a day's pay on October 4th, and (b) going to Rule 12 it becomes clear that he was not entitled to that day's pay because he was not ready for service.

In the opinion of this Division, this argument is not sound. Rule 55 has been incorporated in the telegraphers' agreements since May 1, 1906. Rule 12 was incorporated effective November 1, 1931. From 1906 until 1931 Rule 55 must have meant what its words spell out. During that period its clear meaning could not have been questioned by the carrier's present argument. If the argument is good now, it must be because one purpose or intent of the parties in agreeing to adopt Rule 12 was to substitute something new for the clear terms of Rule 55. No such purpose or intent is expressly stated in Rule 12. In the opinion of this Division none can be fairly inferred. One reason is that Rule 12 operates to guarantee pay of regularly assigned employees able to remain on their jobs and to keep themselves ready for service, while Rule 55 relates to pay for employees who are unable, by reason of certain circumstances, to do either of these things. Each rule has a separate field of operation, and it is a reasonable concept that the parties intended that each rule should be applied in its appropriate field. In the opinion of this Division, Rule 55 was unaffected by the adoption of Rule 12, and warrants an affirmative award.

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 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 claim should be sustained, under Rule 55.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of June, 1941.