

Award No. 1521

Docket No. TE-1543

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Mrs. H. A. Belt, widow of deceased Telegrapher H. A. Belt, Sacramento Division, be compensated for all monetary loss sustained by Telegrapher H. A. Belt because of the action of the Carrier in consolidating the agencies of Vina and Los Molinos, Sacramento Division, in violation of the rules of the Telegraphers' Agreement, such monetary loss including net wage loss, plus any other items of expense that may be involved as result of Carrier's action in violation of Telegraphers' Agreement, such other expense including living expenses and loss of U. S. mail contract."

EMPLOYES' STATEMENT OF FACTS: "Prior to June 15th, 1932, the stations of Vina and Los Molinos were operated as two separate and distinct agencies, having entirely separate and distinct accounting numbers, sets of tariffs, station accounts and all other of the distinguishing features that define separate and distinct agencies. A position of Agent-telegrapher represented by The Order of Railroad Telegraphers was maintained at each point, Vina and Los Molinos.

"On February 17th, 1932, the Carrier filed with the Railroad Commission of the State of California, an application designated by the Commission as Number 17973 which made request upon the Commission as follows:

'SECOND: That your petitioner, Southern Pacific Company, maintains an agency at the Stations of Los Molinos and Vina on its Sacramento Division, in Tehama County, State of California, and keeps an agent on duty at each of said stations between the hours of 8:00 A. M. to 12:00 Noon, and 1:00 P. M. to 5:00 P. M.; that under present conditions the business handled by your said petitioner at said Los Molinos and Vina can, in the judgment of your petitioner, be handled by the maintenance of an agency at Los Molinos during the approximate hours as follows: 8:00 A. M. to 11:00 A. M., 3:30 P. M. to 5:00 P. M. and at Vina during the approximate hours, as follows: 11:15 A. M. to 12:00 Noon, 1:00 P. M. to 3:15 P. M., in view of which your petitioner hereby petitions your Commission for authority to reduce the hours which each agent is kept on duty at each of said stations in accordance with the foregoing approximate schedule of hours for each Station.'

"Later, on May 23rd, 1932, the Railroad Commission of the State of California issued Decision No. 24784 relative Application 17973 granting the request of the Carrier:

OPINION OF BOARD: At the threshold of this inquiry we are confronted with a challenge to our jurisdiction and the contention that we have no power to hear and decide this case because Mr. Belt has died since the filing of his claim and it does not affirmatively appear that any executor or administrator has been appointed for his estate or substituted in his behalf in these proceedings. As indicated in the foregoing statement of claim, the Committee has pressed this matter on behalf of his widow without any proof that she is the person entitled to claim the benefits of an award, if one is made. It is instantly apparent that in a strictly legal proceeding in a court of law, it would be necessary for technical reasons to substitute an executor or administrator for a deceased party, but we do not believe that the technical rules of pleading and procedure in a court of law can reasonably be applied to the administrative procedure outlined by the Railway Labor Act. This act is intended to be remedial and should therefore be liberally construed. It provides for administrative rather than technical legal procedure and should be viewed from that angle. In this case, as in most others, the procedure on behalf of the claimant is through representation by his Brotherhood, rather than his individual appearance through his own counsel. We do not believe it to have been the intention of congress that any other construction be given to this remedial act than such a one as will produce a harmonious relationship between Labor and Capital, which was the very basic object intended to be attained. Viewed in its most technical aspect, nothing more could be required in this case than the appointment of an administrator or executor for the estate of Mr. Belt, and the substitution of that personal representative in this case in place of Mrs. Belt and the only necessity for such a substitution of parties would arise in the event of an award to be sued upon or paid in cash to that personal representative. As will be hereinafter noted that situation cannot arise at the present moment and there is no necessity at this time for a substitution of parties. All of the rights which are being claimed on behalf of the Brotherhood for the benefit of Mrs. Belt arose and fully accrued before his death and there is certainly nothing in the Act which would extinguish those rights if they existed when he died. It is our opinion that under a broad and liberal interpretation of the Act in question, we have jurisdiction to proceed to a determination of the basic questions involved.

We come next to a consideration of whether or not there was a violation of the rules of the telegraphers' agreement entitling the employees to be compensated for monetary loss, and this involves a construction and application of Rules 5 and 19 (c) of the applicable agreement between the parties. Under Rule 5, it is guaranteed that a regularly assigned telegrapher will receive one day's pay within each twenty-four hours if ready for service and not used, or if required on duty less than the minimum number of hours excepting Sunday and holidays. Under Rule 19 (c) it is provided that telegraphers will be notified every thirty days when positions are created or vacancies occur on the divisions where they are located and the telegrapher may apply for such position within ten days from the date of such notification; that assignments will be made within ten days after close of bulletin and a successful applicant given the position within thirty days thereafter; that if not placed therein within the thirty day period the employe will thereafter be compensated on the basis of not less than the rate of position to which assigned.

Prior to June 15, 1932, the stations of Vina and Los Molinos were operated as separate telegraph offices on the Southern Pacific lines and an agent-telegrapher was maintained at each point. In May, 1932, Vina became open and it was placed on bulletin June 2, 1932. The deceased claimant H. A. Belt bid for the office which was assigned to him in the regular course of business on June 13, 1932. Almost immediately thereafter, the carrier abolished the office at Vina by consolidating it with Los Molinos, notwithstanding the fact that Belt had been the successful bidder for Vina, entitled thereto by seniority and the position duly awarded to him on June 13, 1932. He has never been permitted to occupy or enjoy that position, but

on the contrary has been forced to work at short shifts at various points which, as he claimed, in his lifetime, cost him serious monetary loss. The agency at Vina was not legally abolished by authority of the California Railroad Commission until October 30, 1937, which is the date to which monetary compensation is claimed.

We think it is apparent from the face of the record that Mr. Belt was definitely assigned this position before the office at Vina was closed and that his case comes clearly within the guarantee of Rule 5. There is nothing in the brief submitted, nor was there anything presented on oral argument to indicate any reason for doubting on this point and it has therefore become necessary to direct our consideration to the other points urged by the carrier and these are: First, that the claim is stale and is or should be barred by laches. Second, that even if the claim should be allowed, it is speculative and not supported by a sufficient record to justify an award. In the words of the briefs submitted by the carrier, their position is stated as follows: "Respondent holds that the Board lacks jurisdiction of the instant claim; that award 388 (which will be hereafter referred to) is erroneous and should be overruled, and that the agreement rules do not support a claim for monetary loss of the extensive character here presented." We have hereinabove disposed of their first contention as to jurisdiction and will pass to a consideration of their second argument, which is that award 388 should be overruled. It was practically conceded on oral argument that award No. 388 is controlling if not erroneous, and a reading of that award demonstrates the necessity of this concession.

In that case, as in this one, there was a consolidation of two agencies in California on the Southern Pacific Lines, one at Gazelle and the other at Edgewood, which resulted in the ousting of telegrapher Carey, whose work was turned over to another operator. His claim for compensation for monetary loss was similar to that made in this case on behalf of the estate of telegrapher Belt, and his claim was sustained. Much that is said in that award might well be quoted in this one, but since there is nothing to be gained by repetition and since the award is available for any interested person to read, it is sufficient to say that we must adhere to the principles therein annunciated. Nothing has been urged on this hearing of sufficient weight to require us to overrule our previous holding, and we will therefore abide by it.

We have thus concluded that we have jurisdiction of the subject matter of this controversy; that Belt was regularly assigned by bulletin to the position of agent-telegrapher at Vina on June 13, 1932; that he was prevented from occupying that position, thus bringing into effect the guaranty provisions of Rule 5, and that he is entitled to be compensated for all monetary loss under provisions of Rule 19 (c), and other applicable rules, unless he is barred therefrom by some rule of laches, limitation, or "cut-off."

There is no rule of limitation or "cut-off," either in the Act of Congress or in the agreement between the parties, and since these are known as rules of repose they do not exist otherwise than by statutory provision or agreement of the parties. Laches is an equitable doctrine which is of very doubtful applicability in an administrative proceeding of this kind and we do not think it necessary to decide, and expressly do not decide, whether or not it may be relied upon as a defense in this kind of a case. For the purposes of this one opinion only, and without any intention to establish a precedent, it is enough to point out that it cannot even equitably be considered as a bar to the claim made on behalf of the estate of Mr. Belt. The record shows that consolidation of these agencies (and others) was protested by the local chairman for the Brotherhood immediately after it occurred, and that by various letters, conferences and hearings concerning this and other cases, the carrier has been constantly advised of the existence of this claim. It further appears that since the entry of award 388 on February 25, 1937, this claim has been actively prosecuted and it is fairly

inferable from the record that this claim and others had been dragged along awaiting that award. We thus feel that even if we should enter upon the doubtful ground of trying to apply an equitable doctrine of laches, the carrier could not benefit thereby.

The last contention made by the carrier must be sustained. The claim presented on behalf of the deceased employe is of such an extensive and far reaching character that it automatically calls itself into serious question. There is nothing in the record before this board to justify the large claims which are made, and in fact on the contrary there is a flat assertion by the company that Mr. Belt actually earned more between June 15, 1932, and October 30, 1937, than he would have earned had he been retained as agent at Vina. We are quite clearly of the opinion that notwithstanding the guaranty of Rule 5, and the provisions for compensation in Rule 19 (c) the carrier is entitled to a strict accounting of the extent to which compensation shall be made under the rules. Obviously this can only be done by a remandment of the cause for the taking of such an account from available records, and on satisfactory proof. It will also be necessary as herein first above noted, that an administrator or executor be appointed for Mr. Belt's estate and substituted for his widow to receive and receipt for any sums that may be found due. It will therefore be ordered that the claim be allowed to the extent and in the manner herein indicated.

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 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 displacement of agent-telegrapher Belt at Vina constituted a violation of the then prevailing agreement between the parties, and that he was in his lifetime and at the time of his death entitled to compensation under the provisions of Rule 19 (c).

That an administrator or executor for the estate of H. A. Belt may be substituted for his widow in this proceeding if and when anything shall be found due to his estate.

AWARD

Claim sustained to the extent and as indicated in foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1941.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1521
DOCKET TE-1543**

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: Southern Pacific Company (Pacific Lines)

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

It is first to be noted that the request to consider Docket TE-274 cannot be allowed, because by the terms of the settlement in that case it was strictly limited to that particular case, and specifically stated to be without prejudice as to any other claim. In no event could the settlement there reached change the agreement between the parties or the rules pertinent to their interpretation.

The Award in this case is definite and certain; to wit "that the displacement of Agent-Telegrapher Belt at Vina constituted a violation of the then prevailing agreement between the parties, and that he was in his lifetime and at the time of his death entitled to compensation under the provisions of Rule 19 (c)."

Questions of interpretation seem to have arisen out of that sentence on the third page of the opinion of the Board where it is said that Mr. Belt "was prevented from occupying that position, thus bringing into effect the guarantee provisions of Rule 5; and that he is entitled to be compensated for all monetary loss under provisions of Rule 19 (c) and other applicable rules * * *."

The committee seems to take the position that Rule 9 is to be considered under the heading "Other applicable rules" above-mentioned. This Rule 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 the regular compensation shall be paid an amount sufficient to reimburse them for such loss; and in all cases they will be allowed actual necessary expenses while away from their regularly assigned stations."

We are of the opinion that the entire controversy considered in connection with all of the rules and the Award heretofore made, precludes the adoption of this construction. It is a general rule that all parts of a contract and all of its various provisions must be construed together to determine the intention of the parties and to promote justice. Rule 9 obviously refers to a different situation than that one presented by this case, and has no apparent relation to this situation. The Carrier is being penalized in this case because of the closing of the station at Vina, thus preventing Mr. Belt from acting there as a regularly assigned telegrapher. The holding of the Board has been that he should have been assigned to it before it was closed, but that he was prevented from working there. In other words, he was prevented from being what he is now

claimed to be under Rule 9. This clearly brings him within the provisions of Rule 5, which guarantees him one day's pay within each twenty-four hours, etc., and subjects the Carrier to the penalty clause of Rule 19 (c), "If not placed therein within the thirty day period, employe will thereafter be compensated on basis of not less than the rate of position to which assigned." This is precisely the award that was made, and the perhaps unfortunate reference to other applicable rules can refer only to Rule 5, rules as to rates of pay, etc.

Rule 19 (c) is a penalty provision, not a provision for compensation; and as a penalty provision, like all other contracts and laws, must be strictly construed. In their submission of this cause, on page 91 and other pages of the record, the committee has disclaimed all technicalities and sought an equitable adjustment of the claim. Rule 5 guarantees certain hours of employment. Rule 9 obviously applies to telegraphers taken from their regular employment for relief work elsewhere. Rule 19 (c) prevents any unjust delay in making an assignment, and provides a penalty therefor. So construed, and giving each rule its proper consideration rather than taking one word or sentence out of some one rule without giving due weight to the others, the entire matter works out with equity and justice to both parties.

It is our opinion and we hold that Rule 9 has nothing to do with this controversy.

Referee Elwyn R. Shaw, who sat with the Division as a member when Award 1521 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of July, 1942.