

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, 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 A. H. Turner, extra employe on the Springfield Division, be permitted to displace the junior extra employe, J. W. Jerew, who is temporarily assigned to work extra as agent-operator at El Paso, Illinois, because of the absence of the regularly assigned incumbent on an extended sick leave of absence, and that A. H. Turner be paid the difference between what he has earned on other assignments and what he would have earned on the agent-operator position at El Paso since October 17, 1940, the date on which he claimed, but was denied, the right to displace J. W. Jerew on the agent-operator position at El Paso.

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

The position of agent-operator at El Paso, Illinois, rated at 80¢ per hour is covered by said agreement. J. H. Gleason, the regularly assigned incumbent of the position, has been on continuous sick leave since on or about August 17, 1937, and is still on such leave of absence.

Temporary Bulletin No. 22, dated August 10, 1937, advertising for bids the El Paso agent-operator position as a temporary vacancy due to ill health of the regularly assigned incumbent, was issued. On this bulletin T. H. Mezier, agent-operator at Hudson, Illinois, was the successful applicant, was assigned, and worked on the temporary vacancy August 24, 1937, until September 27, 1937, when for some reason he resigned the position and returned to his regular position at Hudson.

Without further bulletining of the temporary vacancy the following extra employes were subsequently assigned to work extra on the position:

C. E. Cole	Sept. 28, 1937 to Oct. 4, 1937
J. W. Jerew	Oct. 4, 1937 to March 11, 1938
W. E. Weatherholt	March 12, 1938 to March 24, 1938
A. H. Brown	March 25, 1938 to May 2, 1938
J. W. Jerew	May 2, 1938 to June 13, 1938
W. E. Weatherholt	June 14, 1938 to July 5, 1938
J. W. Jerew	July 6, 1938 to the present time.

Effective October 10, 1940, A. H. Turner, the regularly assigned agent-operator at Sullivan, Illinois, reverted to the extra list of the division at his own request. On October 15, 1940, extra employe A. H. Turner, in accord-

(3) Take his place on the extra list.

The rule very definitely differentiates by context and punctuation between bulletined assignments and extra work.

The petitioners in case covered by Award 731 contended an employee under this agreement acquires displacement rights only:

1. When his regularly assigned position is abolished in fact,
2. When force is reduced,
3. When displaced by a senior employee who has properly acquired displacement right,

yet notwithstanding the fact that none of these conditions exist, they here contend an employee can voluntarily give up a permanent position, place himself on the extra list and displace an employee on a bulletined assignment. This Board in Award 1044 held an employee who voluntarily relinquished a position could not displace a regularly assigned employee. See also Awards 1034 and 1187.

It is the position of the Carrier that there has been no violation of any rules of the schedule or other agreement or the Railway Labor Act, and as there is no basis or justification for this claim, the Carrier requests that it be dismissed without qualification.

The Carrier has not been furnished a copy of the petitioner's ex parte submission; therefore, it is not now in position to anticipate or answer the contentions which will be made; however, every effort has been made by the Carrier to set out all known and relevant facts at this time and reserves the right after being furnished a copy of petitioner's ex parte submission to make such answer thereto as it may deem necessary and proper.

OPINION OF BOARD: We think claimant Turner has made out his case under the agreement. Contentions of the carrier must one by one fall as the light of close scrutiny is turned upon them. It is difficult to believe that the carrier itself was serious in most of the contentions urged. For example the carrier questions Turner's right to go on the extra board by voluntarily resigning his assignment for that purpose. Surely there is nothing in the agreement that denies such a right unless it is trading jobs of which there is no proof here. With whom did he trade, and what was the deal that carrier would attack? The record is silent.

To the contention that this work at El Paso was not extra work, the record shows conclusively that it was extra work and the carrier so treated it in making the various appointments to fill the successive temporary appointments. If it was the carrier's intention to make the filling of the vacancy caused by Gleason's leave of absence on account of illness in any way contingent upon Gleason's recovery and return to work, there was no suggestion of that in the bulletin, and as far as this record shows, Turner knew nothing of the alleged understanding between the carrier and the local chairman, and even if Turner had known, it could not be urged against him except on basis of waiver, estoppel, or laches (which were found in Award 1806, considered in this connection) none of which are present in the instant case, and even so the organization which represents Turner would not be bound by any violation of the agreement by any understanding to which it was not a party. This is a vital distinction between this docket and that in docket TE-1845, Award 1876, where the local chairman was one of the signatories to the agreement.

Carrier's most urgent contention that this job was bulletined is not supported by the record, that is bulletined according to the rules. Sure it was bulletined when Gleason took leave of absence, but the rules unequivocally required a new bulletining under Rule 40 (a) when Mezier—who took Gleason's place—went back to his former job and a new vacancy of 30 days or over was created.

When Turner went on the extra board, Rule 40 (c) gave him the right to ask for and receive the El Paso job as against Jerew, and when the carrier denied him that right on October 17, 1940, his right to compensation as claimed was fixed as of that date and must 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 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 Rule 40 (c) was violated by the carrier and claimant is entitled to have his claim sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1942.