

Award No. 2391
Docket No. TE-2283

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Henri A. Burque, 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 Telegrapher T. C. Buckingham be compensated for the difference in amount earned by him in relief service, December 21, 1938 to January 7, 1939, inclusive, and the amount that would have been earned by him had he been used in relief service on the position of second telegrapher-clerk at Brooklyn Yard.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Telegrapher T. C. Buckingham, was available for service, December 21st, 1938. His junior in the service, Telegrapher Stokx was used on position of second telegrapher, Brooklyn Yard, Portland, in preference to senior telegrapher, Buckingham.

Seniority date, Buckingham, June 30, 1928,
Seniority date, Stokx, April 2, 1929.

Carrier offered Buckingham a displacement against Stokx, January 5th, 1939.

POSITION OF EMPLOYEES: There is an agreement in effect between the parties to this dispute on file with this Board.

EXHIBITS "A" to "J" are herewith submitted and made a part of this submission.

The claim is prosecuted under Rule 21 (g), which we now quote:

"RULE 21.

**Reduction Of Forces And
Displacement Rights**

(g) Senior extra telegraphers, when available and competent, will be used in preference to junior extra telegraphers. Senior extra telegraphers, not working, will be allowed to displace either THE junior extra telegrapher on the division, or THE junior extra telegrapher in general, relay or dispatchers' offices at any time."

Subsequent to the expression of the Carrier contained in EXHIBIT "J," the dispute was further handled by the parties both by correspondence and in conference.

Conference was held May 15th, 1942 and we quote correspondence exchanged on the dispute after that date.

December 21. Such being the case, the fact that a telegrapher junior to the claimant was used to fill Casey's position during the period from December 21, 1938 to January 6, 1939, inclusive, does not constitute a violation of Rule 21 (g).

Telegrapher Stokx, being the only available and competent extra telegrapher to relieve Telegrapher Casey at 4:00 P.M., December 21, 1938, Rule 21 (g) was strictly complied with when he was so used.

CONCLUSION

Carrier submits that it has conclusively established that the alleged claim in the instant case is without merit and therefore it should be denied.

OPINION OF BOARD: All facts pertinent to the issue raised in this case are agreed upon. Prior to December 21, 1938, the Carrier had agreed to relieve eleven regular telegraphers' positions for Christmas vacation beginning December 23rd, and assignments for relief service were being made. One Casey, who held the position of second telegrapher-clerk at Brooklyn Yard, Portland, Oregon, requested early in the afternoon of December 21st that he be relieved of his assignment at 4:00 P.M. that same day. The request was granted. The Carrier says there were then no more than four hours left to secure an extra telegrapher to accomplish the relief. Claimant Buckingham lived at Marshfield, 240 miles away from Brooklyn Yard, so Carrier considered that he would not be available at the required hour, in that there was no train leaving Marshfield for Portland until 7:00 P.M. that day, due to arrive Portland 7:15 A.M. the following day. In that event Carrier assigned Stokx, an extra telegrapher junior to Buckingham.

The latter was assigned to Coquille, for extra work to begin December 23rd. He worked there until December 31st, inclusive, and then was assigned to Powers for further extra duty, which he performed January 4th and 5th. While there he was advised: "Jan 5/6 1939—You may displace 2nd tel/clk Brooklyn or 3rd tel/clk Cascade Summit G 30." Brooklyn is the same position referred to above and involved here.

Claimant contends he is entitled to compensation for loss of pay resulting from failure on the part of the Carrier to have assigned him to position at Brooklyn Yard in place of Stokx.

No issue is raised as to seniority nor now of qualifications of claimant. The controversy revolves entirely upon the interpretation of Rule 21 (g), which reads in part:

"Senior extra telegraphers, when available and competent, will be used in preference to junior extra telegraphers."

The dispute is over the interpretation to be given the words "when available."

In the first place, we must consider the facts in the case. Here we have a claimant who says he was available, in that he was out of work, a requisite under the rule and present in this case, and could have proceeded to Brooklyn Yard if notified to do so, in that he could have travelled in his automobile, something he had done repeatedly to the knowledge of the Carrier in proceeding from station to station. Carrier answers it would have been a physical impossibility to have travelled 240 miles in four hours at the most over the rugged mountainous territory to be traversed, and we agree that this must be so. The Carrier, therefore, concludes and argues that since Claimant could not have covered the position at the required time, he could not have been available at the inception and consequently the Carrier acted within its rights in assigning another extra telegrapher who could cover the position. We agree as far as December 21st is concerned, but further than that we cannot go.

The service to be performed here was relief service by extra telegraphers and to be assigned on the basis of seniority. We cannot follow the Carrier in its contention that if a senior extra telegrapher cannot be present at the commencement of the work, he therefore loses his right to be assigned to the position unless he afterwards displaces the junior to whom the work was assigned. The senior is entitled to cover the position as soon as he reaches there after being notified of the availability of the work and given an opportunity to accept, and the Carrier has the right to cover the position in the meantime only.

We have examined the rules carefully and are unable to find, in the absence of citation of any rule or precedent supporting the Carrier's contention, any ground upon which reliance can be placed to reach the conclusion contended for by the Carrier. Talk of displacement of Stokx by Buckingham after Stokx was assigned the position is superfluous, since there is no evidence in the record to show that Buckingham even knew of the availability of the position and of his displacement rights until the notice of January 5/6, 1939.

We are, therefore, of opinion that Claimant Buckingham was entitled to be notified of the availability of the position and given opportunity to report and cover it from December 22nd until January 6, 1939, when the regular man returned to protect it. Failure to have done so was violation of the rule by the Carrier, which entitles Claimant to compensation for the difference in what he would have earned on that position and what he actually earned. There being no claim presented by three other senior men to Buckingham, his is the only one to consider, and disposition of this one precludes presentation of claims by others.

Award 1862 is in point. The facts and the rule in that case are similar enough to the present one to be a precedent and authority here.

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 claim be allowed as limited in the Opinion.

AWARD

Claim sustained as noted above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1943.