

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 B. A. Benson be compensated for one hour overtime, September 6 and September 7, 1940, account starting time for position worked by him at Stockton was changed without compliance with Rule 12 (a).

EMPLOYEES' STATEMENT OF FACTS: Claimant Benson was sent to Stockton, Western Division, to begin work at 5:00 P. M. on the position of second telegrapher, as advertised in the Supplement to Telegraphers' Circular No. 592 dated Oakland Pier, September 6th, 1940 (EXHIBIT "A"). He left headquarters at Oakland Pier with instructions to report for duty at 5:00 P. M. He did report and was then notified that he would not begin work until 6:00 P. M.

There is an agreement in effect between the parties to this dispute and that agreement is on file with this Board.

POSITION OF EMPLOYEES: EXHIBITS "A" to "J" inclusive are herewith submitted and made a part of this submission.

The dispute is filed and prosecuted under Rule 12 (a) which we quote for ready reference:

"RULE 12.

Starting Time

(a) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected."

Also relevant to the dispute is Rule 19 (d), first sentence which we quote:

"When positions are created, bulletins will state hours and rate of compensation."

EXHIBIT "A" is a reproduction of the Bulletin and fixes the hours of assignment, 5:00 P. M. to 2:00 A. M., with a meal period.

EXHIBIT "B" and EXHIBIT "F," communications from the Carrier, sustain the statement of the Claimant and the Committee that the instructions were issued to the Claimant after his arrival at Stockton, September 6th, that the hours of assignment were changed; therefore changed without the 36 hours' notice stipulated in Rule 12 (a).

The position of the Committee is set forth in EXHIBITS "C" and "E."

The only reason given by the Carrier for declining the claim is that found in EXHIBIT "D"—

"for the reason that Benson was not assigned to this position by bulletin."

A regular assignment having a regular starting time is not established until it is assigned and regularly worked. The thirty-six hour notice provision of Rule 12 (a) is operative only after a regular assignment, having a regular starting time, has been established and notice of change can be given to the occupant of the position that the regular starting time of his assignment will be changed.

When the claimant commenced service on September 6, 1940, a regular assignment having a regular starting time did not exist.

During the period between the date of issuance of notice that a new assignment was to be established and the date such assignment was established as a regular assignment having a regular starting time, the proposed starting time of the assignment contained in the notice could be changed without thirty-six (36) hours' notice, for there was no employee affected thereby to whom such notice could be given.

Applying the foregoing to the claim in the instant case, it is clear that changing the starting time of the assignment from 5:00 P. M. to 6:00 P. M. prior to it becoming a regular assignment with a regular starting time and prior to the claimant commencing work on the assignment did not in any way constitute a violation of Rule 12 (a).

Having established that Rule 12 (a) in no way supports the claim in this docket and no other rule of the current agreement being in any way applicable to or in any way supporting the said claim, carrier submits that it has conclusively established that the claim in this docket is without merit and should be denied.

CONCLUSION

The carrier asserts that having established that the alleged claim in this docket is entirely without merit, it is incumbent upon the Board to deny it.

OPINION OF BOARD: The agreed facts are that on September 6, 1940, the Carrier posted the following bulletin advertising what it claims to have been a new position under Rule 19 (c):

"Agents,
Telegraphers:

"Bids will be received until 5:00 P. M., September 13, 1940, for position of 2nd Telegrapher, Stockton, hours 5:00 P. M. to 2:00 A. M., with meal period of one hour, rate \$0.86 hourly."

Claimant, an extra telegrapher, was ordered from Oakland (headquarters' extra board) to Stockton to fill this position on September 6, 1940, pending the assignment of the successful bidder or regular occupant thereto. His orders were to report at 5:00 P. M. Upon arrival at Stockton he was notified his starting time would be 6:00 P. M. The claim is for two hours' overtime, September 6th and 7th, on the ground that under the Rule he was entitled to 36 hours' notice before the time could be changed.

Rule 12, Starting time:

"(a) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected."

The Carrier contends this Rule applies to regular assignments after same have been established and assigned to a successful bidder, that this was a newly created position, and was not established and assigned until September 13th. We cannot agree.

First, we have adopted the Statement of Facts from the brief in behalf of the Carrier, which does not differ from its Exparte Submission, except that there it appears Claimant, "was placed in the position described in the notice of September 6, 1940, pending the assigning of the successful applicant thereto." In a letter under date of May 7, 1941, addressed to the Committee's General Chairman, the Carrier's representative states the situation in these words:

"Extra Telegrapher Benson was deadheaded Oakland to Stockton to inaugurate 2nd Telegrapher position, September 6, and upon arrival Stockton, Trainmaster notified him that starting time of 2nd Telegrapher position would be 6:00 P. M., and to be governed accordingly."

It was stated in behalf of the Carrier that Claimant was ordered, "to fill this position," and by the Carrier that he "was placed on position," and also "to inaugurate 2nd telegrapher position." No one can fill a position, be placed on a position, or inaugurate a position unless the position is already created, in effect and in existence. To inaugurate means to set in operation, or progress; to celebrate the completion or setting up; to open. The time set for covering the position was 5:00 P. M., as per bulletin, and 5:00 P. M. as per instructions given to Claimant. The position was created and in effect when due to open. If, as the Carrier argues, the position only became a regular position September 13th, what kind of a position shall we call it from September 6th to September 13th?

The Carrier says it created the position (and we will agree for the sake of argument that it was a new position), certainly it became effective at the time the Carrier wanted it covered, and consequently became a regular position from its creation and inception. The Rule is directed to the position and not to the employee. The employee is only a means of effecting the desired result. True it is, he is only an extra, doing temporary work, which is no different than relief service in the event of temporary vacancy in an already existing permanent position, but the position is there and is being filled. Award 2209, cited in behalf of the Carrier, is practically to the same effect. It recognizes what we would recognize here, if the situation were the same, and simply holds, that the employee who covers the position does not become a regular until such time as he is assigned the position regularly. It does not hold that the position itself is not a regular position until then; the issue was not present in that case.

Certainly no one would argue that Claimant, in the instant case, would not be entitled to at least one hour's pay, when in pursuance to orders he reported at 5:00 P. M. to work and was then told he would not begin till 6:00 P. M. But we go further than that, we say the position was in existence as a permanently established one when he reported, and that consequently the working hours of the position could not be changed without 36 hours' notice to cover it, which forms the foundation for the claim. Claimant is entitled to two hours' overtime pay which he claims.

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 employee involved in this dispute are respectively carrier and employee 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 Carrier violated Rule 12.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of November, 1943.