

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Delaware, Lackawanna and Western Railroad, that the carrier violated and continues to violate Rules 16-(c) and 18 of the telegraphers' agreement by, on February 23, 1943, and again on March 3, 1943, bulletining the newly created position of clerk-operator at Tobyhanna, Pa., improperly as a temporary vacancy, and by denying the senior qualified available extra employe the right to work on this newly created position until properly bulletined and filled in accordance with Rule 16-(c) of said agreement, and that the senior qualified available extra employe shall be paid a day's pay for each and every day he was denied this work that was his from the day the position in question was created until properly filled under Rule 16-(c).

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The stations, or offices, of Mount Pocono and Tobyhanna are located on the carrier's property known as the Scranton district. Telegrapher A. F. Kelley was regularly assigned to a clerk-operator position at Mount Pocono.

Effective after Mr. Kelley's tour of duty at Mount Pocono February 13, 1943, the position there occupied by him was abolished by the carrier. Mr. Kelley, pursuant to the provisions of Rule 21 of the Telegraphers' Agreement, declared for a position at Lehigh Tower, then occupied by an employe junior to him. At no time subsequent to the abolishment of the position at Mount Pocono did Mr. Kelley relinquish his right as a regularly assigned employe and declare for the extra board.

Effective 7:00 A. M., February 15, 1943, a new clerk-operator position was established at Tobyhanna. Mr. Kelley was permitted or required by the carrier to occupy the newly established clerk-operator position at Tobyhanna from the date and hour of its establishment until it was regularly bid in pursuant to Bulletin No. S-646 dated March 3, 1943, which expired ten days thereafter, and which advertised the position a second time due to an alleged error in quoting an 81¢ rate in Bulletin No. S-644 dated February 23, 1943. Bulletin No. S-646 quoted an hourly rate of 80¢.

POSITION OF EMPLOYEES: Rules of the Telegraphers' Agreement applicable in the instant proceeding are:

"Rule 15-(a) Employes holding temporary or regular assignments will not be required to do relief work except in case of emergency. When they are required to do relief work * * *."

the transfer with the minimum of one day. Employees who are ordered into positions by the Management will be allowed time for posting if necessary.

(b) Employees will be in line for promotion and where ability and qualifications are sufficient in the judgment of the Management, seniority will govern.

(c) New positions or vacancies will be promptly bulletined for a period of ten days and assigned promptly according to the above rules. Name of the successful bidder will be posted."

At the time the temporary job was authorized, A. F. Kelley had just been released from a position of clerk-operator discontinued at Mt. Pocono, an adjacent station, and thereby became the oldest man on the Telegraphers' list. Being the senior qualified extra clerk-operator, he placed himself on the vacancy at Tobyhanna in accordance with Rule 21, reading:

"Rule 21—Reduction in Forces—In the event of a reduction in forces in positions covered by this schedule, the incumbents of the positions abolished will have the right to any position covered by this schedule on the division where they are employed which they are competent to fill, and the incumbents thereof are their juniors in the service and will be given employment on other divisions, if qualified, in preference to persons not in the service."

He successively bid in and was assigned to the temporary vacancy, also to the permanent vacancy advertised on August 5, and awarded August 11, 1943, in accordance with Rule 21.

The employees' statement of claim charges the Carrier with violation of rules but does not specify in what way the rules were violated, nor do they name any employee improperly denied work.

Rule 16 (c) was not violated by the Carrier. Its provisions were observed. The Carrier acted strictly in accordance with this rule and Rule 17 (b) of the Agreement which reads as follows:

"Rule 17—Temporary Vacancies—Paragraph (b)—Temporary and known vacancies of more than 30 days duration will be regularly advertised."

Kelley's position having been discontinued at Mt. Pocono, he chose the temporary work at Tobyhanna afforded him by the extra list even though he had previously signified his intention of placing himself at Lehigh Tower. There is nothing in the agreement preventing him from working on a temporary vacancy and he, therefore, properly placed himself in the temporary vacancy at Tobyhanna. Thereafter, he bid upon and was awarded the position when it was advertised as a permanent vacancy.

The Carrier submits that there is no basis for the claim either under the rules or practices, that no employee was caused to lose time because of any improper act of the Carrier, and that the claim should be denied.

OPINION OF BOARD: Position of clerk-operator at Mt. Pocono, occupied by A. F. Kelley, was abolished February 13, 1943. On February 15, 1943 carrier established a new position of clerk-operator at Tobyhanna and bulletined same as a temporary vacancy. Following abolishment of Kelley's position on February 13 he made two requests:

- (1) to displace Kocella on the second trick at Lehigh Tower, and
- (2) that he be allowed to work the new position of clerk-operator at Tobyhanna until that position was filled under bulletin.

Kelley filled the new position at Tobyhanna while it was on bulletin.

The action of the Carrier in advertising the new position as a temporary vacancy and permitting Kelley, a regular assigned employe, to fill the position during the period it was on bulletin was not in compliance with the provisions of the Agreement.

The claim for pay for the senior qualified extra employe for the days in question is disputed, Carrier contending that had Kelley not been permitted to fill the Tobyhanna position, he would have displaced Kocella who would immediately have become the senior extra unassigned employe and would have been eligible to fill the temporary position at Tobyhanna. The employes have offered no evidence to dispute this contention, neither have they named a definite employe who could have been available as the senior extra employe had Kelley not filled the position.

Consequently, under the facts of this case, the claim for pay for the senior extra unassigned employe should be denied.

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 claim will be sustained in accordance with the Opinion.

AWARD

Claim sustained in accordance with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.