

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, 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 J. E. Rutherford be compensated for two days lost, March 1st and March 10th, 1941, account being taken from his regular assignment as agent-telegrapher at Edison, San Joaquin Division, and used as train dispatcher, March 2nd and March 11th, 1941.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. E. Rutherford was regularly assigned to position of Agent-telegrapher at Edison, San Joaquin Division. He had qualified as train dispatcher and was subject to call for the performance of train dispatcher duties. The train dispatcher duties that he might perform were of an extra nature and irregular.

Carrier desired to use him as a train dispatcher 12 midnight to 8:00 A. M., Sunday, March 2nd, 1941 and in order to use him in this capacity, Carrier was under the necessity of relieving Agent-telegrapher Rutherford at Edison on March 1st. He was not paid for Saturday, March 1st.

The same situation obtained when the Carrier desired to use Claimant Rutherford as train dispatcher, 12 midnight to 8:00 A. M., Tuesday, March 11, 1941 and he performed no service on Monday, March 10, 1941.

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

POSITION OF EMPLOYEES: EXHIBITS "A" to "F" inclusive are shown as a part of this submission.

EXHIBIT "A" is communication addressed to Claimant Rutherford by the Superintendent of the San Joaquin Division, Mr. J. D. Brennan. In this communication, the Carrier representative admits that Claimant was unable to work his assignment as Agent-telegrapher at Edison due to the application of the Hours of Service Act. Statement also contained in EXHIBIT "A" to the effect that Mr. Rutherford was accepting promotion to position of train dispatcher, is not in accordance with the facts. Mr. Rutherford had already accepted promotion as train dispatcher and had qualified for that work. There not being sufficient work as train dispatcher to keep him occupied, he was, under the provisions of the Telegraphers' Agreement, Rule 17 (f), permitted to hold his assignment as Agent-telegrapher at Edison and any use of him made under the circumstances set forth in the Statement of Claim was entirely at the convenience of the Carrier.

EXHIBIT "B" is the presentation of the claim to Carrier representative DeYoung by the General Chairman.

CONCLUSION

The carrier asserts that the claim in this docket not being based on or supported by any rule or provision of the current agreement or interpretation thereof or practice thereunder, the Division has no alternative but to dismiss it and the carrier so requests.

OPINION OF BOARD: By this claim it is asserted on behalf of an agent-telegrapher that he is entitled to pay for his regularly assigned shifts on March 1 and 10, during which he was required to lay off, under the Federal Hours of Service Act, to qualify to work extra as a train dispatcher on March 2 and 11, 1941. In addition to being a telegrapher, the claimant was a qualified train dispatcher, and as such was subject to call, and required to respond to protect his dispatcher's seniority.

The claimant relies upon Rule 5 of the Telegraphers' Agreement which provides, among other things, that regularly assigned telegraphers shall be entitled to pay if they are "ready for work and are not used." On the other hand, the Carrier says that the claimant was not "ready for work" as a telegrapher on March 1 and 10, within the meaning of said Rule.

The evident purpose of Rule 5 is to protect telegraphers against loss of time for which they are not responsible. In accordance with its terms, the Rule guarantees a regularly assigned telegrapher one day's pay within each 24 hours when he is ready for service. But a telegrapher who voluntarily renders himself unavailable for such work cannot claim the protection of said Rule, and such appears to be the situation here. The claimant voluntarily subjected himself to the terms of the Hours of Service Act, and thereby rendered himself unavailable for service as a telegrapher on the days in controversy, when he accepted calls to work as an extra dispatcher. His situation, as pertains to his rights under the effective Agreement with which we are here concerned, are precisely the same as if he had remained away from his regularly assigned position for his own convenience. His idleness on March 1 and 10 was solely occasioned by his acceptance of employment as a dispatcher and he might have declined to serve in that capacity without violating the Telegraphers' Agreement, in which event there would have been no impediment to his working on his regular position.

There is no analogy between this case and those relating to the transfer of a telegrapher from one telegrapher's position to another. The rights of such employees so transferred are, of course, to be determined according to the terms of the effective Telegraphers' Agreement.

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 employees involved in this dispute are respectively carrier and employees 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.