Award No. 2730
Docket No. TE-2628

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 Mattie L. Gannon be compensated under the provisions of Rule 4 (b) of the Telegraphers' Agreement for relief service performed on position No. 276 in "BD" General Telegraph Office, San Francisco, California, April 10, 11, 13 and 14, 1942.

EMPLOYES' STATEMENT OF FACTS: Morse Telegrapher W. S. Manning assigned to position No. 276 in "BD" General Telegraph Office, San Francisco, was rated at 98½¢ per hour. Mr. Manning, a Major in the United States Army Reserve Corps, was called to active service, his position was advertised under the provisions of the Selective Service Act and pending assignment, was filled on April 10, 11, 13, and 14, 1943 by Telegrapher (Printer Clerk) Mattie L. Gannon.

Gannon, an extra operator, being used to relieve Manning under Rule 4 (b) of the Telegraphers' Agreement, claimed pay under that rule at the rate of 98½¢ per hour, which was the rate of the employe she relieved. The Carrier reduced her rate to 80¢ per hour.

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 EMPLOYES: EXHIBITS "A" to "F" inclusive, are shown as a part of this submission.

Claim is filed under Rule 4 (b) which we now quote:

"RULE 4.

Basis of Pay

(b) Telegraphers will receive the same compensation in relief service as the telegrapher they relieve."

EXHIBIT "A" is the claim as filed with the Superintendent of Telegraph by the Claimant and designates in the first paragraph, the rule under which the claim is filed, 4 (b).

EXHIBIT "B" is the reply of the Superintendent of Telegraph, in which the position of the Carrier is defined. Carrier assumes that the position was extra, unassigned work which is not the case. Mr. Manning was the employe relieved and so long as the position is his, relief work performed on that position must be rated at the same hourly figure as was paid Mr. Manning.

POSITION OF CARRIER: The dispute in this docket is confined to a claim on behalf of the claimant for the difference between the rate she was paid while used on Position No. 276 (80¢ per hour) during the period April 10, 11, 13 and 14, 1942, and the rate of $.9850 per hour (the rate received by W. S. Manning while occupying Position No. 276). The said claim is based on Rule 4 (b) of the current agreement, which is as follows:

> "Telegraphers will receive the same compensation in relief service as the telegrapher they relieve."

In other words, it is the petitioner's position that the claimant was being used to relieve Manning on Position No. 276, and therefore was entitled to the rate that was paid Manning while he occupied said position.

In taking the aforementioned position the petitioner fails entirely to consider the fact that while the claimant was filling Position No. 276 during the period mentioned above, she was not relieving Manning and was not engaged in relief service; she was an extra employe filling a vacancy pending assignment.

When Manning entered military service, Position No. 276 became vacant and by virtue of the letter of agreement of March 30, 1942 (see Exhibit A) said position was advertised as a vacancy and subsequently assigned to the successful applicant, namely, Miss Florence H. Cooper.

The petitioner has not at any time contended that Position No. 276 was improperly advertised as a vacancy on April 4, 1942, and could not so contend, as the letter of Agreement of March 30, 1942 (Exhibit A) provides that all positions which are vacated by employes entering military service shall be advertised. How, then, can the petitioner contend that the claimant was in relief service when she was filling a vacancy as an extra employe?

The foregoing establishes that Rule 4 (b) quoted above does not in any way support the claim in this docket and in view of the fact that the petitioner relies solely on said agreement provisions it follows that the claim is entirely without basis.

CONCLUSION

Having established that the claim in this docket is without merit or basis, the carrier respectfully submits that it is incumbent upon the Division to deny said claim.

OPINION OF BOARD: Telegrapher Manning, regular incumbent of the position in controversy, was called into active military service on April 4, 1942. The position was bulletined and filled, subject to Manning's rights, on April 21. Meanwhile, on April 10, 11, 13, and 14, the position was occupied by the claimant who was paid in accordance with the Memorandum of Agreement of September 5, 1929, and Rule 20 (i) of the Schedule Agreement pertaining to the operation of automatic printers. Petitioner asserts that the claimant was entitled to the same rate of pay as Manning, by virtue of Rule 4 (b), reading:

> "Telegraphers will receive the same compensation in relief service as the telegrapher they relieve."

Manning's rate was 98½ cents per hour, because his seniority ante-dated July 2, 1929, though the work that he performed was that of a puncher using an automatic printer. The claimant was actually paid 80 cents per hour, which was the maximum rate of telegraphers employed subsequent to July 2, 1929, and regularly assigned to punchers' positions. The difference of 18½ cents for the hours worked by the claimant is the monetary measure of the claim. The vacancy occasioned by Manning's call to military service was a temporary one, in the sense that he was considered as on leave of absence or on furlough during his period of military service and was entitled to be re-

stored to his former position upon his discharge and return. The question arises, then, as to the status of the claimant, while she occupied the position. In other words, was claimant relieving Manning, within the contemplation of Rule 4 (b), or was she performing extra service, under the terms of the Memorandum of September 5, 1929?

It is urged on behalf of the petitioner that the above question must be answered in its favor because of Award 1534, in which it was concluded that Section (e) of the Memorandum of September 5, 1929, does not modify Rule 4 (b) of the Agreement, proper. The Carrier points out, however, that Award 1534 involved a situation in which the parties were in agreement that the claimant in that case was engaged in relieving the regular employe, who had laid off on his own account, while here the substantial question to be determined is whether this claimant was engaged in relief work.

Bearing in mind the circumstances surrounding the absence of Manning; the uncertainty as to whether he would ever return, or whether he would reclaim the position, if he did; the character of his rights in the meanwhile; the manner in which the vacancy was filled; and the rights of those assigned to the position during Manning's absence, we are unable to conclude that the claimant was in relief service, as contemplated by Rule 4 (b). The more natural and logical deduction is that claimant was merely filling a vacancy pending an assignment.

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 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.