

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad, that L. E. Popeck, regularly assigned to the 2nd trick operator-clerk position in the Elmira, New York, Passenger Station, who bid in and was regularly assigned on June 1, 1943, to the temporary vacancy on the 3rd trick operator-towerman position in the Elmira, New York, Yard and not allowed by the Carrier to go to work on the position during the period it existed—June 1, 1943, to October 9, 1943, both dates inclusive—but instead was required to remain on the 2nd trick operator-clerk position in the Elmira Passenger Station, shall be paid \$1.00 per day for each day June 1, 1943, to October 9, 1943, both dates inclusive, he was required to perform relief work on the position in the Elmira Passenger Station.

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

L. E. Popeck, prior to June 1, 1943, was regularly assigned to an operator-clerk position, assigned hours 4:00 P. M. to 12:00 o'clock Midnight, seven days per week, at the Elmira Passenger Station. In the exercise of seniority and for reasons purely his own, he bid for and by Bulletin No. P-132, dated June 1, 1943, was assigned to 3rd trick operator-towerman position, assigned hours 12 o'clock midnight to 8:00 A. M., 7 days per week, at Elmira Yard.

The Carrier held Mr. Popeck off of his regularly assigned position at Elmira Yard and required him to perform relief service at Elmira Passenger Station from June 1, 1943, to October 9, 1943, both dates inclusive. For this relief service the Carrier allowed to Mr. Popeck the higher rate of the two positions but declined to allow the \$1.00 per day as provided for in Rule 15-(a) of the Telegraphers' Agreement. No travel time was involved.

The Telegraphers' Agreement, hereinbefore referred to, lists at Page 24:

Elmira Passenger Station	
Operator-Clerk First Trick	71¢ per hour
Operator-Clerk Second Trick	70¢ per hour
Operator-Clerk Third Trick	70¢ per hour
Elmira Yard	
Operator-Towerman First Trick	74¢ per hour
Operator-Towerman Second Trick	74¢ per hour
Operator-Towerman Third Trick	74¢ per hour

The above rates were increased by 10¢ an hour, effective December 1, 1941, and by 4¢ an hour, effective February 1, 1943.

The claim is not supported by Schedule rules and is negated by long established interpretation and practice on this property—it is without merit and the Carrier respectfully submits that it should be denied.

OPINION OF BOARD: This case involves a claim for \$1.00 per day expense allowance under Rule 15 (a), from June 1, 1943 to October 9, 1943, inclusive.

Carrier contends that claim should be disallowed (1) because no actual expense has been shown and (2) employee did not actually occupy position at Elmira Yard, nor did he commence to perform duties there, and therefore the assignment was not effectual.

We have no difficulty in reaching the conclusion that it is not necessary to show actual expense before payment of the \$1.00 per day expense allowance is justified. The award of \$1.00 is an arbitrary allowance and not dependent upon proof of actual expenses. (2604.)

As to Carrier's main contention that there was no assignment within meaning of 15 (a), the problem has not been easy of solution. Employee did not actually change places of employment. A rather persuasive argument is presented that the situation is similar to that in Award 2209, where it was held that extra employees were not regularly assigned until they actually began to work as regularly assigned employees.

In this case, however, we do not have to decide this troublesome question because of Carrier's own construction of the assignment. It is sufficient for this case to hold that the assignment was complete and in effect because it was so considered by the Carrier itself. During the period in question employee was paid the Elmira Yard rate, which is higher than Elmira Passenger Station rate where employee actually worked. This conclusively determines the issue of assignment adversely to the Carrier by reason of its own conduct. In paying the higher rate for the position at Elmira Tower Yard, Carrier is now precluded from asserting that the assignment was not in effect because employee had not occupied the position and commenced his duties there.

If the assignment was effectual so as to justify the payment of the Elmira Yard wage rate, obviously it was also effectual so as to require payment of the \$1.00 per day expense allowance. The rule cannot be arbitrarily dissected and made to apply to the wage rate and not apply to the expense item. If there was an effectual assignment, as Carrier's own conduct conclusively demonstrates, employee is entitled to all the benefits the rule affords.

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 Carrier violated Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1945.