

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, 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 Company that:

1. (a) Telegrapher L. W. Hammond, regularly assigned to a bulletined temporary vacancy in East Buffalo Yard, be paid, under the rules of the Telegraphers' Agreement, \$1.00 a day for each of 32 days in August and September, 1944, on which he was required to perform emergency relief service in the Elmira Ticket Office;
- (b) Telegrapher L. W. Hammond be paid eight hours at East Buffalo Yard rate of 95 cents an hour because of one day lost, September 3, 1944, while transferring from second to first trick hours at Elmira Ticket Office on Carrier instructions; and,
- (c) Telegrapher L. W. Hammond be paid travel time (train time) in each direction between Buffalo and Elmira.
2. (a) Telegrapher L. W. Cascio, regularly assigned to a bulletined temporary vacancy on second trick Elmira Ticket Office, be paid, under the rules of the Telegraphers' Agreement, \$1.00 a day for August 30 and 31, and September 1, 1944, on which days he was held off of his assignment at Elmira to perform emergency relief service at Bath; and
- (b) Telegrapher L. W. Cascio be paid travel time (train time) in each direction between Elmira and Bath.

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.

Bulletin No. P-255 dated August 1, 1944, advertised to telegraph schedule employees, in accordance with Rules 16-(c) and 17-(b), a temporary vacancy at East Buffalo Yard, Buffalo, New York, hours of service 4:00 p. m. to 12 midnight. Bulletin No. P-261 dated August 16, assigned L. W. Hammond, the senior applicant, thereto. Mr. Hammond thereafter for a period of 32 days was required to perform emergency relief work at Elmira, New York.

POSITION OF CARRIER:

1. There is no proof that the Organization was authorized by the employees to handle the purported claim on the Property.
2. There is no proof that the employees authorized the Organization to take the purported claim to the Board.
3. There is no proof that the employees were given notice of hearing by the Board, that they waived such notice, and that they waived appearance at the hearing hereon.
4. The Board, accordingly, lacks jurisdiction to make a legal and binding award.

E. J. & E. vs. Burley
U. S. Supreme Court
#160, October Term, 1944

5. Mr. Hammond is not entitled to "one day lost" on September 3, while transferring from second to first trick, allegedly "on Carrier's instructions." He transferred from second to first trick because he personally asked to do so and the transfer was in accordance with his own request. The claim that he did so upon "instructions" of the Carrier is not in accord with the facts.

6. Mr. Hammond is not entitled to traveling time or \$1.00 per day expenses. He never left Elmira; hence, he did no traveling and incurred no "extraordinary cost of personal maintenance." (Award 2604.)

7. Mr. Cascio is not entitled to traveling time or expenses of \$1.00 per day. There was no proof adduced to the Carrier respecting these items in the handling of the claim on the property. Claims must be proved, not merely asserted.

8. The Carrier is not in agreement with the claim of the Organization that Awards 2604 and 2843 control. These Awards were erroneous and should be over-ruled. There should be no hesitation in over-ruling erroneous decisions. (Award 9673—First Division.)

9. Hammond cancelled his bid for the East Buffalo job; hence, no claim predicated thereon is valid.

OPINION OF BOARD: Claimant Hammond was the regularly assigned operator at the Elmira ticket office with hours 4:00 p.m. to midnight. The rate of pay was 89 cents per hour. On August 1, 1944 a bulletin was posted advertising a temporary vacancy in the position of operator, at East Buffalo yard, hours 4:00 p.m. to 12:00 p.m. at the rate of 95 cents per hour. Hammond bid for this and was assigned to it. The carrier, however, for reasons which it claims were beyond its control, did not relieve him from his regular assignment to fill the temporary position for which he had bid, but did pay him the rate of pay of the temporary position. This payment by the carrier establishes that the assignment of the claimant to the temporary position was in effect even though the claimant never occupied the position. Award 2843.

August 16, 1944 a bulletin was posted advertising a temporary vacancy for the position at the Elmira ticket office to be vacated by the claimant Hammond. Claimant Cascio was assigned to this but the carrier was unable to relieve Cascio from his regular position so that he could proceed to Elmira and relieve Hammond. The carrier did, however, pay Cascio the higher rate of the Elmira position. This payment, in accordance with the doctrine set forth in Award 2843, establishes that the assignment of the claimant to the temporary position was in effect.

Hammond makes claim (a) for \$1.00 per day for each of thirty-two days that he worked at the Elmira ticket office when he should have been working on the temporary assignment at East Buffalo, and (c) for travel time in each direction between Buffalo and Elmira, and (b) for eight hours at East Buffalo yard rate for time lost while transferring from second to first trick hours at Elmira office on September 3 on carrier's instructions.

Cascio makes claim (a) for \$1.00 per day on August 30, and 31, and September 1, on which days he was held off his assignment at Elmira, and (b) for travel time in each direction between Bath and Elmira.

The claimants contend that the failure to pay the \$1.00 per day and the refusal to pay for the travel time were violations of Rule 15 (a) of the current agreement, and that the failure to pay Hammond for the day lost while transferring from the second trick to the first trick at Elmira ticket office was a violation of Rule 23.

These two rules read as follows:

"Rule 15 (a). Employees holding temporary or regular assignments will not be required to do relief work except in cases of emergency. When they are required to do relief work at any office other than the one to which assigned, they will be paid the rates of the position they fill, but not less than their regular rates and shall be paid straight time on the minute basis at the rate of the higher paid position while traveling to and from the temporary assignment, in no case to exceed eight (8) hours pay. In addition to this they shall be reimbursed for any time lost in making the change, also receive one dollar (\$1.00) per day for expenses."

"Rule 23. Regularly assigned employees will receive one day's pay within each twenty-four (24) hour period according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays."

The carrier contends that it was not obligated to pay under Rule 15 as there were no expenses incurred and no traveling done. The carrier says that there was no violation of Rule 23 because the transfer was not made at its request but to comply with the wishes of the claimant, who laid off of his own volition on September 2nd and 3rd.

Awards 2604, 2843, and 3134 involving this same carrier hold that the \$1.00 per day is an arbitrary allowance to be paid regardless of whether expenses are actually incurred. We feel that such is the correct construction of the rule and that these awards are controlling here.

Awards 2604 and 3134 hold that the same principle applies as to the claim for travel time. There is more doubt with respect to this interpretation than as to the other. It is not, however, unreasonable and should in our opinion be followed, particularly as the failure to do so will result only in confusion. For an analogous award, see 2209.

Claim 1 (b) involves an issue of fact. The reason why a day was lost is not from the record at all clear. We think that this claim should be remanded to the parties to jointly develop the evidence on this point.

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

With respect to claims 1 (a), 1 (c), 2 (a) and 2 (b), there was a violation of Rule 15 (a). Claim 1 (b) should be remanded.

AWARD

Claim 1 (a) sustained.
Claim 1 (c) sustained.
Claim 2 (a) sustained.
Claim 2 (b) sustained.
Claim 1 (b) remanded for the purpose set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.