

Award No. 3422
Docket No. TE-3544

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Bruce Blake, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Milwaukee, St. Paul and Pacific Railroad, that R. M. Swailes, who, while regularly assigned to a temporary vacancy on the Third Trick Operator's position at Camp Douglas, Wisconsin, rate 89 cents per hour, served notice on the Carrier on November 29, 1944, that effective December 4, 1944, he desired to be returned to his regularly assigned permanent position of First Trick Operator at Tomah, Wisconsin, rate 93 cents per hour, but was not allowed to do so until December 28, 1944, is entitled under the provisions of Rule 14-(b) to \$2.00 per calendar day for expenses, and shall be paid the difference between what he was paid for his services at Camp Douglas and what he would have earned on his regularly assigned permanent position at Tomah, December 4, through December 27, 1944, except December 18, 1944; and in addition, payment for overtime accruing to his regularly assigned position at Tomah during this period. Total amount of claim approximately \$80.00.

EMPLOYEES' STATEMENT OF FACTS: Telegrapher R. M. Swailes, regularly assigned to the first trick position at Tomah, Wisconsin, La Crosse and River Division, first district, applied for and was appointed to the third trick position at Camp Douglas, Wisconsin, a temporary position on bulletin, and commenced work on the temporary position on October 19th, 1944.

After working the temporary position at Camp Douglas, Wisconsin, for a month or more, he wrote his superior officer under date of November 29th, 1944, requesting that he be returned to his regular position at Tomah, Wisconsin on December 4th, 1944.

He was not relieved at Camp Douglas, Wisconsin, until he had completed his assignment on December 27th, 1944, because it was claimed that there were no extra telegraphers available to relieve him.

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the Order of Railroad Telegraphers and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, effective May 1, 1939, governing the rates of pay, hours of service and working conditions of telegraphers, copies of which are on file with the Board.

Telegrapher R. M. Swailes, regularly assigned to the first trick position at Tomah, Wisconsin, applied for and was appointed to the third trick position at Camp Douglas, Wisconsin, a temporary position on bulletin, and commenced work on the temporary position October 19, 1944.

Telegrapher Swailes applied for and received the temporary new position (not a vacancy) at Camp Douglas in accordance with Rule 5-(a); therefore, he was not performing relief work at Camp Douglas. To the contrary, he was filling a position to which he had been appointed by bulletin in accordance with the provisions of Rule 5-(a). The Carrier can see no basis for the claim of \$2.00 per day expenses, or for the claim of 32¢ per day; the difference between the rate of the first trick position at Tomah and the rate of the third trick position at Camp Douglas.

Insofar as the claim for overtime worked on the first trick position at Tomah while Telegrapher Swailes occupied the third trick position at Camp Douglas, the Carrier will advise that there is no rule in the Agreement which would support the payment claimed.

Summarizing, it is the Carrier's position that:

1. Rule 5-(c) provides no penalty in the event the employe cannot be returned to his regularly assigned position on the date requested.
2. The claimant was not performing relief work at Camp Douglas; therefore, his claim for expenses and the difference between the rates at Tomah and Camp Douglas cannot be supported by Rule 14.
3. The claim for the overtime worked at Tomah cannot be supported by any rule of the agreement.
4. The entire claim is without merit and the Carrier respectfully requests that it be declined.

OPINION OF BOARD: The essential facts are not in dispute and have been so clearly stated by the parties, in their joint submission, that we think there is no necessity for recapitulating them.

The question for determination is whether the facts bring the claim within the provisions of Rule 14(b). This in turn depends upon the status of Claimant, in relation to the temporary position at Camp Douglas, on and after December 4, 1944. That was the effective date of his request to be returned to his regularly assigned position at Tomah. That request was made in compliance with the provisions of Rule 5(c). The Carrier contends that that rule carries no penalty and that, since Claimant was assigned to the temporary position at Camp Douglas upon his own application, his claim does not fall within the compensation and expense allowance provisions of Rule 14(b). The Rule, it is to be noted, specifically provides:

"The provisions for expense allowance does not apply when appointed upon application to positions covered by Rule 5(a), * * *"

While the temporary position at Camp Douglas was covered by Rule 5(a) and Claimant was assigned to it upon his own application, he did not hold it voluntarily on and after December 4, 1944. On the contrary, we think it is clear from the record that on and after that date he was required to hold it in a case of emergency: the unavailability of extra telegraphers.

So, it seems to us, that, as of December 4th Claimant's status changed from an assignment covered by Rule 5(a) to one covered by Rule 14(b): an employe required to perform relief work in a case of emergency. We think this conclusion is supported by Awards Nos. 2843, 3134, 3228. In those cases situations counterpart to this were presented: the employes, because of emergent conditions, were held on their regularly assigned positions and were not permitted to fill temporary positions for which they had made application. Claims were sustained for compensation and expence allowance under rules identical with or similar to Rule 14(b).

We think the principle laid down in those Awards is equally applicable to the situation presented by the facts in this record.

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 parties waived oral hearing thereon;

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 violated the Agreement.

AWARD

Claim sustained except for claim for overtime at Tomah.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1947.