

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 and Western Railroad Company that L. W. Cascio, who was regularly assigned to a Ticket Clerk-Operator position at Corning, New York, effective February 7, 1945, who was not allowed by the Carrier to assume duty thereon, and who, instead, was required by the Carrier to perform relief services at other stations which resulted in the loss to him of four days' work, viz., February 17, 18, 19 and 20, 1945, shall be allowed a day's pay at the Corning rate for each of these days.

EMPLOYES' 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.

L. W. Cascio, who owned a Ticket Clerk-Operator position at Corning, New York, effective February 7, 1945, was not permitted by the Carrier to occupy said position; instead, he was required to perform emergency relief service, under the provisions of Rule 15 (a), of the Telegraphers' Agreement, at Elmira Tower, second trick, February 7, 8 and 9; at Elmira Tower, first trick February 11, 12 and 13; at Vestal, first trick, February 14, 15 and 16; and at Waverly, first trick, February 21, 22, 23 and 24.

Upon completion of his tour of duty at Elmira Tower February 13 Mr. Cascio was instructed (by telephone) by the Chief Train Dispatcher to protect the first trick at Vestal for three days, February 14, 15 and 16, and await further instructions. On February 20 the Chief Train Dispatcher instructed Mr. Cascio to protect first trick at Waverly February 21 through February 24. Mr. Cascio complied with all instructions.

During the time Mr. Cascio was held away from his regular assignment at Corning, New York, the Carrier allowed him, in accordance with the provisions of Rule 15 (a), of the Telegraphers' Agreement, the higher rate of the positions involved, travel allowances, \$1.00 a day for expenses (except for the days February 17 through February 20), and the day lost, February 10, transferring from second trick to first trick at Elmira Tower; but Mr. Cascio has not been paid for the four lost days between the assignments at Vestal and Waverly, or February 17 to 20, inclusive.

The Organization invited the Carrier to join in this Submission, but the invitation was declined.

The Carrier does not agree with the employee's assertion that Cascio was not allowed by the Carrier to assume duty at Corning and instead was required by the Carrier to "perform relief service at other stations."

Your Board must not be misled by such assertions because it is contrary to the facts in this case. "We quote from letter written under date of October 5, 1940 by General Chairman Slocum to General Manager Shoemaker:

"* * * Each employe involved has been compensated under the provisions of Rule 15 (a) with exception of L. W. Cascio—he being the extra board employe who was continued on the extra list, when he should have been working on his assigned position at Corning Ticket. **Travel time and expense allowance has been paid Cascio;** the only item still in dispute pertains to the loss of four days' work, viz., February 17, 18, 19, and 20, 1945. * * *"

In this letter, the General Chairman had reference to employes in the same category as Cascio, that is, several employes who were doing relief work on positions other than those to which regularly assigned, and who were compensated under Rule 15 (a) in the same manner as Cascio. Therefore, the employes having acquiesced in such settlement of similar claims cannot now justify the position taken in the case now before your Board.

The only question involved is the interpretation of Rule 17 (c). Mr. Cascio failed to observe this rule in not returning to the position at Corning which he owned. Cascio failed to comply with the mandatory provision of Rule 17 (c). The Carrier cannot be penalized for the laxity of claimant in failing to do what Rule 17 (c) of the Agreement required him to do.

In summary, Rule 15 (a) gave the Carrier the right in case of emergency to require him to work at Vestal.

"15 (a) Employes holding temporary or regular assignments will not be required to do relief work except in case 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 17 (c) above set forth, gave him the right and indeed made it mandatory for him to return to Corning at the conclusion of his work at Vestal.

For the reasons hereinabove set forth the claim should be denied. Exhibits not reproduced.

OPINION OF THE BOARD: The claimant herein, prior to February 6, 1945, was an extra telegraph operator. On that date he was assigned to a position as clerk-operator at Corning, New York. Instead of being permitted to assume his duties in his assigned position, however, he was required to perform relief service at various other stations during the period from February 7 to February 24, 1945, both dates inclusive. He was paid for all of this time in accordance with Rule 15-(a) of the current agreement except for the days of February 17 to 20, both inclusive, on which days he performed no service. On February 13, 1945, he was ordered by the chief dispatcher, by telephone, to report the next day for relief work as agent-telegrapher at Vestal, New York, for three days and then await further orders. The regular agent-telegrapher at Vestal, New York, returned for duty on the fourth day and the claimant was given no further orders until on February 20, he was ordered to perform further relief service for four days, February 21 through February 24, at Waverly.

The Carrier insists that under Rule 17-(c) the Claimant was required to return to his assigned position upon the completion of his relief work at Vestal, New York. That rule provides:

"Employees holding regular assigned positions when filling temporary vacancy shall return to their regular position:

1st—At the expiration of such temporary vacancy."

While the Carrier does not expressly deny that the dispatcher ordered the Claimant to proceed to Vestal, New York, and there await further orders, it insists that the Claimant should have either followed the provision of Rule 17-(c) or have reported to his chief dispatcher that he was available for service when his work was finished at Vestal, New York.

The Claimant had been an extra telegrapher, had been ordered from one position to another and up to the time in question had done no work on his regular assigned position. While Rule 17-(c) gives general instructions, it would seem that such a rule must necessarily yield to a specific order of the chief dispatcher.

In this case there was apparently a misunderstanding between the parties and apparently the chief dispatcher had forgotten that he had ordered the Claimant to await further orders after completing the work at Vestal, New York. The case presents the question of whether the Carrier or the Claimant shall suffer the loss occasioned by the misunderstanding.

It is our opinion that under the circumstances of this case the Claimant was within his right in following the specific order of the chief dispatcher and that the Carrier should stand the loss.

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 Claimant should be allowed pay for the four days in question at the rate of his regular position at Corning.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 18th day of February, 1948.