

Award No. 3782

Docket No. TE 3802

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 D. Molyneaux, regularly assigned Third Trick Operator, Binghamton Yard Office, Binghamton, New York, be compensated at time and one-half rate of his regular position for each hour he performed service as Clerk-Operator at Cresco, Pennsylvania, outside of his assigned hours at Binghamton Yard Office, June 27 through July 9, 1945, plus straight time rate for each hour he was suspended from his regular position at Binghamton Yard Office during the same period of time, less the compensation previously allowed for 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.

At pages 20 and 27, of the Telegraphers' Agreement, the following positions, with rates of pay, are listed:

Cresco:

Agent-Operator71 an hour
Clerk-Operator70 an hour

Binghamton Yard Office:

Operator, First Trick73 an hour
Operator, Second Trick72 an hour
Operator, Third Trick72 an hour

(Each rate during 1945 was 19¢ higher)

June 27, 1945, and continuing through July 9, 1945, D. Molyneaux, regularly assigned to the Third Trick Operator position at Binghamton Yard Office with assigned hours 12 Midnight to 8:00 A. M. was required or permitted to vacate his regular position and to occupy the Clerk-Operator position at Cresco with assigned hours 7:30 A. M. to 3:30 P. M.

During the period Molyneaux occupied the Cresco position his position at Binghamton Yard Office was filled by an extra employee.

"RULE 4—Overtime

Except as otherwise provided, time worked in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate."

"RULE 5—Call Rule

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

"RULE 11—Suspension of work during Regular Hours.

Employees will not be required to suspend work during regular hours to absorb overtime."

There is no indication whatsoever that Mr. Molyneaux worked in excess of eight (8) hours on any day between June 27 and July 10, 1945 on the Cresco, Pa. position; he was not called to work on that position outside of the regular work period; Mr. Molyneaux did not suspend work during the assigned hours of the Cresco position to absorb overtime.

Mr. Molyneaux was not held off the East Binghamton Yard assignment between June 27 and July 9, 1945 inclusive as implied by the employees. Mr. Molyneaux elected to exercise his rights to the Cresco position under Rule 17 (a) as shown in the statement of facts. The Carrier, therefore, had no alternative under the agreement but to permit Mr. Molyneaux to work on the Cresco position.

Claim should be denied for the following reasons:

- (1) Rules 4, 5, and 11 of the current Telegraphers' Agreement are not applicable.
- (2) Rule 17 of the current Telegraphers' Agreement is controlling.
- (3) The Carrier in permitting Molyneaux to work on the vacancy at Cresco, Pa., did so strictly in accordance with the intent and meaning of Rule 17 (a) of the current Telegraphers' Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: For a period of at least ten years the Carrier had been each June advertising for bids on and filling a summer position of Operator-Clerk at Cresco, Pennsylvania. Pursuant to this custom the Carrier advertised for bids on this position June 11, 1945, but there were no bidders.

On June 18, the Chief Dispatcher at Binghamton asked the claimant if he "was figuring on taking the summer job at Cresco". The claimant, the regular third trick operator at Binghamton, said that he "was figuring on taking it", and the Chief Dispatcher then suggested that Claimant place himself on the job and take it before it was assigned. Pursuant to this suggestion claimant, the same day, sent a telegram to the proper Carrier official stating that:

"I wish to place myself on vacancy of seasonal position at Cresco Station under 24 hour notification."

No bids were received by Carrier in response to its June 11 advertisement and the position was again advertised on June 27, 1945. On the same day the claimant was placed on said position pursuant to his request. Later he bid on and on July 10 was assigned to said position for the summer.

For the period June 27 through July 9 the Organization is demanding that claimant be paid time and one-half rate of his Binghamton position for each hour he performed service at Cresco outside of his assigned Binghamton position hours plus straight time Binghamton rate for each hour he was "suspended from his regular position".

This demand is based on the contention that claimant was improperly placed on the Cresco position, and the further contention that the fact that it was done at claimant's request is immaterial.

The Carrier insists that claimant was first placed on the Cresco position under and pursuant to the provisions of Rule 17 (a) of the agreement which provides:

"When a position is vacant five (5) days it will be given to the senior qualified applicant. Applicant must make his intention known at least twenty-four (24) hours before starting time."

The Organization insists that there could be no "vacancy" within the meaning of Rule 17 (a) until after the position had been filled and then vacated.

With this contention we cannot agree. Here we have a position that had been established many years before. The claimant had filled the position at least one summer prior to 1945. It is true that during the winter months, due to lack of work, the position was not filled. It is equally true that each year during the summer months the increased work made it necessary to fill the position. By its advertising the position on June 11, 1945, the Carrier complied with Rule 17 (b) which required that:

"Temporary and known vacancies of more than 30 days duration will be regularly advertised."

The Carrier thus made the fact known that again the increased work at Cresco made it necessary to fill the position.

The claimant by his telegram and by his subsequent bid indicated that he again wanted to fill this position during the summer of 1945.

By his telegram claimant recognized the position as a "vacancy of seasonal position" and by the use of the words "under 24 hour notification" clearly indicated that he was applying under Rule 17 (a).

In view of the facts of this case we must hold that for the period in question claimant was properly placed on the position under the provisions of Rule 17 (a).

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 there was no violation of the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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