

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad (now the Gulf, Mobile & Ohio Railroad) that G. R. Patterson, regularly assigned first trick operator-clerk at Higginsville, Missouri whose regularly assigned relief day in each week was on Sundays, which relief days were not assigned to a regular relief position, shall be paid a day's pay at time and one-half for Sunday, February 2, 1947, because he was relieved from working on this relief day by a person who was not a bona fide extra employe under the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing the date of June 16, 1944, as to rules of working conditions is in effect between the parties to this dispute.

G. R. Patterson was the regularly assigned first trick operator-clerk at Higginsville, Missouri, and at the time involved his regular relief day under the Six Day Per Week Rule 29 of the Telegraphers' Agreement was regularly assigned to fall on Sundays.

In arranging this relief day for Patterson's position it was not possible to assign it to a regular relief position, and under Rule 29 of the Telegraphers' Agreement it had to be assigned to and worked by the senior extra employe available on these relief days.

On Sunday, February 2, 1947, there was no extra employe available for this work, and an employe who was on a definite stated three year leave of absence and not subject to call and who had not reported for service was used to perform this work.

Patterson's claim for a day's pay at time and one-half for this day's work of which he was thus deprived, was denied by the Carrier.

CARRIER'S STATEMENT OF FACTS: G. R. Patterson held regular assignment as operator-clerk at Higginsville, Missouri. Sunday, February 2, 1947, was his regular assigned day of rest. No regular relief operator was available to fill the position on February 2, 1947. However, an operator who was on leave of absence became available and was used to work the relief position of February 2, 1947.

The Employes contend that the employe on leave of absence was not eligible for use on the position and that since no extra or regular relief operators were available, Operator G. R. Patterson should have been allowed to work his relief day.

(c) Telegraphers who have been in the service of the Railroad five or more years will upon request be granted one year leave of absence, retaining their seniority and will go to the extra list.

(d) Telegraphers in the service of the Railroad fifteen years or more will upon request be granted one year leave of absence, retaining their position one year.

(e) In individual cases, and subject entirely to the judgment of the Company, leaves of absence more extensive than provided above may be granted by special agreement between the General Chairman and the proper officer of the Company."

"Rule 28

Employees returning to work after any absence from duty will give at least sixteen (16) hours' advance notice, except that an extra employe reporting for duty after absence may be used without regard to this stipulation, provided he is the only extra employe available to fill the vacancy when arrangements for protecting the vacancy are made."

As will be noted, there is nothing in Rule No. 27 which prohibits an employe being permitted to return to service before the expiration of his leave of absence. Especial attention is directed to Rule No. 28, which covers reporting after absence. It will be noted that notice in advance of reporting is waived in respect to an extra employe "provided he is the only extra employe available to fill the vacancy when arrangements for protecting the vacancy are made".

It is the position of the Carrier that the claim is without merit, is not supported by any of the provisions of agreement between the Carrier and the Employees, or by awards of your Board, particularly Award No. 3133, and should be denied.

OPINION OF BOARD: Petitioners ask that G. R. Patterson be paid a day's pay at time and one-half for Sunday, February 2, 1947 because he was relieved from working on this, his rest day, by L. A. Wollenman who, Petitioners contend, was on a leave of absence which had not been terminated. Petitioners contend that an employe who is on a definite leave of absence is not eligible to fill a relief position when the regular incumbent of the position is available to work on his rest day on an overtime basis and no extra employe is available.

No extra employe, unless Wollenman could be considered as such, was available for work on the day in question. Wollenman had been granted a leave of absence in order that he might occupy the position of County Collector, a position paying a yearly salary and requiring the incumbent to devote his entire time to the official position; Wollenman was occupying that position on the day in question. While the three year leave of absence was due to expire on February 6, 1947 it had, in fact, been extended on December 10, 1946 so as not to expire until February 6, 1948.

The mere fact that Wollenman had voluntarily made himself available for use "for a day or two if needed" by the Carrier, and the fact that he was used on the day in question do not establish his eligibility to fill the position. There is no sufficient evidence in the record to establish that Wollenman intended to terminate his leave before February 6, 1948, and there is nothing in the record to show that he did perform service for the Carrier between February 2, 1947 and February 6, 1948. An employe on a definite leave of absence may return to the service before the expiration of his leave, but he must first cancel his leave, or effectively do so at the time when he returns to the service.

In Third Division Award 3760, involving a question somewhat similar to that in this case, a telegrapher who had been promoted to work extra in another class, but who retained his seniority under the Telegraphers' Agreement, was used to relieve an employe under the Telegraphers' Agreement

on his rest days. There this Board held that the promoted employe was not under the coverage of the 'Telegraphers' Agreement while under promotion, and was improperly used by the Carrier to relieve the employe under the Agreement on his rest days.

When Wollenman was granted a definite leave of absence from the service of the Carrier under the 'Telegraphers' Agreement he was not thereafter subject to call; he would not be unqualifiedly subject to call as an extra man until he should report for duty after the cancellation or termination of his leave of absence. Wollenman reported to the dispatcher that he was ready and willing to relieve any employe "for a day or two"; extra employes cannot limit their acceptance of work; if this employe was back he would have to take whatever extra work might be assigned to him. The Board concludes that the leave of absence was not terminated.

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 employe involved in this dispute are respectively carrier and employe 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

The Carrier violated the Agreement by using Wollenman to relieve the Claimant on the Claimant's rest day.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1949.