

Award No. 5174

Docket No. TE-5024

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY
(Eastern and Western Divisions)**

STATEMENT OF CLAIM: Claim of the General Committee on The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad Company, Eastern and Western Divisions, that P. B. Marsh, the regularly assigned third trick operator-clerk at Pearl, Ill., who was taken off his assignment to perform relief work on the position of agent-operator at Hillview, Ill., October 2nd through October 16, 1948, shall be compensated at the rate of time and one-half on the basis of the assignment filled on each day he performed relief work on the agent-operator position at Hillview, instead of the pro rata rate at which he was paid for this relief work, and be allowed actual necessary expenses while away from his home station, as provided by Rule 21 of the telegraphers' agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date June 16, 1944, as to rules of working conditions, revised October 1, 1948, as to rates of pay, was in effect between the parties to this dispute.

P. B. Marsh while regularly assigned to the third trick operator-clerk position at Pearl, Ill., was taken off his assignment to perform relief work on the position of agent-operator at Hillview, Ill., October 2nd through October 16, 1948, for which relief work he was paid only at the pro rata rate of the Hillview agent-operator position.

Rule 21 of the prevailing telegraphers' agreement provided as follows:

"Regular assigned telegraphers who are taken off their assignments to perform relief or emergency work on other assignments coming under this agreement will be compensated at the rate of time and one-half on the basis of the assignment filled, and if so used on assignments away from their home station they shall also be allowed actual necessary expenses while away from their home station."

The positions of third trick operator-clerk at Pearl and the agent-operator were positions coming under the telegraphers' agreement.

On November 13, 1948, the General Chairman filed claim with the Carrier in behalf of employe Marsh that he be paid at the rate of time and one-half instead of the pro rata rate at which he had been paid for this relief work

Although Operator Marsh was regularly assigned at Pearl, he lived at Hillview, the next station, about 5 miles distant. Therefore, if he could be permitted to relieve the Agent at Hillview for vacation, it would allow him to work two weeks in his home town, a favor he urgently desired.

The facts present in this dispute are identical in every respect with the facts present in the case covered by Award No. 3692 by your Board. In that case your Board denied the claim of the Employees on the basis of "Opinion of Board," part of which is quoted hereunder:

"We must deny these claims. In each of the rules which the Organization says the Carrier violated there is either the implication or outright statement that a REQUIREMENT on the part of the Carrier is involved. (Rule 5 is predicated on a notification or call by the Carrier, Rule 11 on a requirement, Rule 23 on an assignment.) In this case we find no evidence of the Carrier REQUIRING or ASSIGNING the job swap. It was purely voluntary. As we understand the facts Miss McCormick initiated the whole deal because she wanted to work in her home town, while Natoli didn't care which job he filled. The Carrier in this case merely ASSSENTED to the swap. It should not be penalized.

Swapping days off and vacations is as old as days off and vacations in round-the-clock industries. Usually such trades are headaches to the employer, and some hard-hearted ones refuse to permit the practice. To penalize the Carrier for allowing the employee-initiated trade in this case would be neither equitable nor justified by the agreement."

When the present case arose, Award No. 3692 was not known to Carrier's Chief Dispatcher and probably not known to the Employees involved. Therefore, it cannot be said that the granting of permission was in any way influenced by Award No. 3692.

Notwithstanding Award No. 3692, the Carrier, only in order to avoid opportunity for such claims in the future and not as admitting violation of rules, has instructed that permission be not granted in other similar cases hereafter.

The Carrier believes that it has clearly proved that the provisions of Rule 21 have no application in this case and lend no support to the claim of the Employees.

The Carrier further believes that your Board, having denied an identical claim in Award No. 3692, will be consistent and deny this claim.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of your Board.

OPINION OF BOARD: Claimant was the regularly assigned third trick operator-clerk at Pearl, Illinois. From October 2 to 16, 1948, he was used to perform relief work on the position of Agent Operator at Hillview, Illinois, and was paid the pro rata of the latter position for so doing. The claim is for the time and one-half rate and actual necessary expenses while working at Hillview. The controlling rule states:

"Regular assigned telegraphers who are taken off their assignments to perform relief or emergency work on other assignments coming under this agreement will be compensated at the rate of time and one-half on the basis of the assignment filled, and if so used on assignments away from their home station they shall also be allowed actual necessary expenses while away from their home station." (Rule 21, current Agreement.)

The record shows that Claimant requested that he be permitted to work the Hillview positions during the vacation period of the regular occupant.

Claimant resided in Hillview although he worked at Pearl. He wanted to relieve at Hillview as a matter of personal convenience. He waived all additional pay or expense resulting. The Carrier granted Claimant's request with the understanding that additional expense to the Carrier would not be incurred. The employee entitled to the relief work at Hillview also agreed to the arrangement. Upon completion of the assignment, a claim was filed by the Organization.

The Agreement was clearly violated. The Carrier attempts to make a point of the fact that Claimant was not required to work the Hillview relief assignment. We have previously held, and correctly we think, that if an employee is permitted to work a position he has been required to work it or taken off his regular assignment within the meaning of Rule 21 and similar rules.

The rule to be followed is correctly stated in Award 4461 wherein we said:

"... The Organization has the authority to police the Agreement. It is authorized to correct violations and to see that the Agreement is carried out in accordance with its terms. In so doing, it acts on behalf of all employees who are members of the Organization. Individual members are not permitted to contract with the Carrier contrary to the provisions of the collective agreement and thereby make the collective agreement nugatory...."

See also Award 4850.

The Carrier relies upon Awards 3692, 3782 and 4930. The Awards are grounded on the theory that the employee has estopped himself from asserting a claim. We desire to point out that the Organization has the right to police the Agreement and that acts of an employee creating an estoppel as to him does not operate as an estoppel against the Organization. To so hold would tend to defeat the purposes of collective agreements.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1950.