

Award No. 6201

Docket No. TE-6127

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MISSOURI PACIFIC LINES
(in Texas and Louisiana)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that;

(a) The Carrier violated the terms of the Telegraphers' Agreement when R. C. Musgrove and J. K. Briley were denied their request, made on June 16, 1949, to return to their regular assigned positions at Opelousas, Louisiana.

(b) The Carrier violated the terms of the Telegraphers' Agreement when R. C. Musgrove, was denied the right to exercise displacement rights at Opelousas, Louisiana, on June 20, 1949.

(c) R. C. Musgrove be re-imbursed for the difference in compensation received, and what he would have earned had these violations not occurred.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement bearing effective date of October 15, 1940, is in evidence; copies thereof being on file with the National Railroad Adjustment Board.

There is located on the lines of the Carrier at Opelousas a tower which is manned by employes covered by the Telegraphers' Agreement. This agreement of October 15, 1940 lists two positions in the wage scale, designated as Leverman.

On May 31, 1949, instructions were issued by the Carrier that effective June 1, 1949, the classification of the first leverman position would be changed to Telegrapher-Leverman. No change was made in the classification of the position of second Leverman.

At the time, May 31, 1949, the reclassification of first Leverman was made, R. C. Musgrove held title to the regular assignment of the first leverman position, but was actually working a temporary assignment as second

the Employees have not contended that the position should have been re-bulletined when the change in classification was made, nor is their claim based upon such a position. They merely contend that when the classification of the position was changed, Mr. Musgrove should have been permitted to return to that position. It is the position of the Carrier that Rule 3 (h) specifically denies such a right, and the Employees' own expressed interpretation of that rule, as well as that of your Board, in Award No. 3810, above referred to, supports the Carrier's position. The claim should, therefore, be denied.

The Carrier does not understand wherein Rule 3 (f), which the Employees, in their Statement of Claim allege was violated, has any bearing on this case whatever; however, it is quoted next below for information of the Board.

"Rule 3 (f). When an employee's position is abolished or he loses his regular position through no fault of his own, he may displace any one of the ten (10) youngest regularly assigned employees, (this applies to any class of service covered by this agreement) junior to him holding a regular position in other than small non-telegraph agencies, or at his option he may displace any regularly assigned employee junior to him occupying a position in the small, non-telegraph agency class, in the relay district any one of five (5) youngest regularly assigned employees junior to him may be displaced under this section may in turn assert their seniority in like manner until the youngest employee is displaced or displaced employees cease to assert their privileges. An employee exercising his rights under this section must do so within seven (7) days from date actually relieved from the position, by the regularly assigned employee, or by a senior employee from the extra list, or he may, at his option assert his rights within seven (7) days from the displacement notice advice. Should a condition arise under the operation of this section where more than one employee on the same seniority district becomes eligible to exercise displacements rights during the same twenty-four (24) hour period the senior employee will have preference of choice of position. This section applies regardless of any temporary assignments made or bulletins issued under the provisions of Sections (g) and (h) of this rule.

An employee not qualified as a telegrapher, (if qualified for the position selected) may displace either of the two (2) youngest regularly assigned employees junior to him holding a position in any class of service covered by this Agreement, exclusive of the small non-telegraph agencies, or may at his option displace any regularly assigned employee junior to him holding a position in the small non-telegraph agency class."

The above quoted rule sets forth the rights of and procedure to be followed by an employee whose position is abolished or he loses his regular position through no fault of his own. In this case Mr. Musgrove's position was not abolished, nor did he lose his regular position through no fault of his own; therefore, we fail to see wherein that rule has any applicability in the instant case and, consequently, how it could have been or was violated as alleged by the Employees.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties.

OPINION OF BOARD: The factual situation of this claim is as follows:

Briley who had asserted his seniority for a temporary position at Houston Yard was assigned to the position by Circular No. 71 on March 10, 1949. Briley was the regular occupant of the second trick leverman position at Opelousas Tower.

Musgrove, who was the regular occupant and working first trick at Opelousas Tower, bid in and was assigned the temporary vacancy on second trick leverman position at Opelousas Tower, on March 28, 1949.

Briley who had been assigned to the temporary vacancy at Houston Yard bid in and was assigned to the temporary vacancy of the first trick leverman position at Opelousas Tower by Circular No. 87 on April 3, 1949.

Now we have Briley temporarily holding Musgrove's regular job first trick Opelousas Tower and Musgrove temporarily holding Briley's regular job second trick at Opelousas Tower.

On May 31, 1949 the Carrier changed, effective June 1, 1949, the classification of first trick leverman position Opelousas Tower to telegrapher-leverman—no change in the second trick leverman position.

On June 16, 1949 Briley and Musgrove jointly requested that they be placed on their respective regular positions. This request was denied by the Carrier. Musgrove then sought to exercise his seniority because of the change in classification of his regular position first trick at Opelousas Tower by displacing Briley both on his regular position and the temporary vacancy he was holding. This was denied by the Carrier.

On July 18, 1949 Briley was assigned after proper bulletin and bid, to a position at another location, leaving the permanent assignment on second trick leverman position at Opelousas Tower vacant. This also removed Briley from the temporary vacancy on first trick telegrapher-leverman position at Opelousas Tower. On July 23, 1949 Musgrove was placed on the first trick telegrapher-leverman position at Opelousas Tower.

The claim states: that the Carrier violated the terms of the Agreement when it did not allow Briley and Musgrove, on July 16, 1949, to return to their regular assigned positions; that Musgrove should not have been denied the right of displacement on June 20, 1949; and that Musgrove be reimbursed for the difference in compensation received and what he would have earned had the violation not occurred.

When the position at Houston Yard became a temporary vacancy it was not known by the Carrier or the Employees how long it would be vacant. However they both knew it would be thirty days or more. Therefore when the position was advertised no time limit was set forth. Rule 3 reads in part:

"(g) Temporary positions or vacancies of less than thirty (30) days in offices where more than one employee is employed will be filled by advancing employees in such offices according to their seniority, if they so desire. * * *

"(h) * * * **Successful applicants under this section will not be permitted to return to their regular positions until the expiration of the time limit specified in the bulletin unless the regular occupant of the position resumes duty prior to the expiration of his leave. * * *** (Emphasis added).

This Rule means that the successful applicant for a temporary vacancy will not be permitted to return to his regular position until the expiration of the time limit specified, (and there was no time limit specified in any of the bulletined positions in question in this claim), or until the regular occupant of the position resumes duty prior to the expiration of his leave. Therefore because Briley and Musgrove found themselves in this peculiar position, neither could claim his regular job except by virtue of Rule 25 which reads:

"Trading of positions will not be allowed, except for good and sufficient cause and then only when authorized by the Carrier and the Organization representing the employees."

This rule specifies that good and sufficient cause must be present, also that there must be an agreement authorizing the trading of positions by the Carrier and the Organization. The Carrier refused to agree to the trade, therefore the denial of this joint request of June 16, 1949 was proper under the effective agreement. The Employees state that the denial of displacement made by Musgrove was a violation of the Agreement by the Carrier under Rule 3 (r):

"When the classification of any position, coming under the purview of this Agreement, is changed, or the rate of compensation is reduced, the rate of pay shall be fixed to conform with positions of a similar class on that Division, and shall not operate to displace the regular incumbent, if competent. Employees **affected** by the re-classification or reduction in rate of compensation, of their positions, if they so desire, may exercise their seniority under Section (f) of this rule, provided they do so within thirty (30) days from the date of re-classification or reduction in compensation. * * *"
(Emphasis added).

While Musgrove was working the temporary vacancy on the second trick leverman position at Opelousas Tower, he was not **affected** by the re-classification of his regular position of first trick telegrapher-leverman at Opelousas Tower.

In view of the clear language of Rules 3 (h), 3 (r) and 25 we hold that the Agreement was not violated by the Carrier and the claim must be denied.

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

The Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.