Award No. 10678
Docket No. TE-9641

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Preston J. Moore, 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 Gulf, Mobile and Ohio Railroad that:

1. Carrier violated the agreement between the parties when on May 3, 10 and 24, 1956 it failed to use the senior available extra employe to fill the vacancy on third shift Montgomery, Alabama.

2. Carrier be required to compensate H. O. Jordon a day's pay at the Montgomery Tower rate on each of the dates mentioned in paragraph 1 of this claim.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At Montgomery, Alabama Tower, Carrier maintains continuous telegraphic service around the clock, seven days per week. This requires three positions, changing shifts at 7:59 A. M., 3:59 P. M., and 11:59 P. M. and in addition a rest day relief position relieving on the first shift Saturdays and Sundays, on the second shift Mondays and Tuesdays and on the third shift Wednesdays; this leaves one rest day of the third shift starting at 11:59 P. M. each Thursday as a "tag-end" rest day which was not included in any relief assignment and remains unassigned to be filled by an extra employe if available, otherwise by the regular incumbent of the position.

On Thursdays, May 3, 10 and 24, 1956 this rest day vacancy was available for idle extra employes with less than forty hours in their work week and on each of these dates Claimant H. O. Jordan, located at Okolona, Mississippi, was the senior idle extra employe on the seniority district and was available; however, on each occasion the Carrier refused to furnish Jordan transportation from Okolona to Montgomery and did call and use an extra employe with less seniority than Jordan to fill the vacancy.

Claim was filed in behalf of Jordan account of this "run-around", handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined.

been highway buses operating between Okolona, Mississippi and Montgomery, Alabama. There is no requirement that extra employes have automobiles although a number of them do. The Carrier has never been informed as to what type transportation the Claimant desired.

The only mention of transportation in the Telegraphers' Agreement is contained in Rule 34. No allegation has ever been made that the Carrier did not fully comply with Rule 34. Therefore, Carrier would understand that Rule 34 is not involved in this dispute.

As stated in the Statement of Facts, the instant claim is the only one ever received alleging a violation of Rule 18 where an Extra Telegrapher was notified to perform extra work and he refused to do so, requesting transportation. In all other instances Extra Telegraphers have made their own arrangements for transportation. Where passenger trains are available Extra Telegraphers are given passes to ride such trains. In this particular case the Carrier has never operated a passenger train directly between Okolona and Montgomery except through a connection in Artesia. As stated, the Artesia to Montgomery train was discontinued in March of 1954. The Carrier has never furnished Extra Telegraphers with automobiles. Therefore, under the claim as presented here, it is unknown to the Carrier as to what transportation the Claimant refers to. Certainly the Claimant was afforded the same opportunity to perform extra work at Montgomery as is afforded all other Extra Telegraphers under similar circumstances. The Claimant simply refused to go and is here asking for pay as though he had not refused to go.

Obviously, the Claimant was not available to perform work at Montgomery on the dates of the claim. It is likewise obvious that the Carrier is not obligated to pay the Claimant when he was not available to perform the work.

The claim is without merit and should be declined.

Carrier reserves the right to make an answer to any further submission of the Petitioners.

(Exhibits not reproduced.)

OPINION OF BOARD: On May 3, 10 and 24, 1956 it became necessary for Carrier to order an extra Employe to perform a relief assignment.

Under Rule 18(g) the oldest available extra employe on the seniority district, if competent shall be used to fill temporary vacancies.

Carrier telegraphed Claimant to report for work on each of the above dates. Claimant telegraphed Carrier unable to on account of no transportation or requested transportation in order to work.

Carrier did not furnish transportation and Claimant did not work the shifts on those three dates. Petitioner contends that Claimant being the senior available extra man on the seniority district should have been used on the 3 dates in question. Also that under Rule 8, 18(g), Rule 34 and according to practice that Claimant should have been furnished free transportation.

Carrier contends there is no rule in the existing Agreement requiring free transportation under present circumstances.

It further contends that it has been the practice for extra Employes covered by the O.R.T. contract to make their own arrangements for transportation and that the Carrier has never furnished free transportation except in the limited case where it provides a pass on its own passenger trains.

This brings us to a consideration of the claim on its merits. Let us examine the rules relied upon by the Petitioner — Rule 8 is a deadhead rule.

Rule 8 provides:

"(a) Extra employes deadheading will receive $1.711 per hour while in transit, computed from leaving time of the train or other conveyance available to the public where train service is not available, until arrival at station where service is to be performed, with minimum of three (3) hours. This rule not to apply to regular relief agents or to new employes accepting first assignment.

"(b) Employes deadheading to fill temporary vacancies on their respective seniority districts will be limited to a maximum of six (6) hours' pay, regardless of the time consumed for any one trip."

Rule 8 does not authorize free transportation. It does recognize that extra Employes may have to use other conveyance than train service but no interpretation of the rule requires Carrier to furnish free transportation.

Rule 18 provides:

"(g) The oldest available extra employe on the seniority district, if competent, shall be used to fill temporary vacancies, but cannot claim extra work in excess of 40 straight time hours in his work week if a junior extra employe who has had less than 40 hours' work week is available."

Claimant was the senior extra employe available and should have been used if available. Let us examine the record to see if he was available. By telegram Carrier notified Claimant on May 2: "Go to Montgomery work 3rd trick tomorrow night 11:59 P. M. Thursday one day answer."

Claimant to Carrier on May 3rd responded by telegram "Unable to go to Montgomery for 3rd trick account no transportation."

May 9th Carrier wired Claimant as follows "Go to Montgomery and work 3rd trick tomorrow night 11:59 P. M. 10th answer."

Claimant wired Carrier as follows: "Your wire date. Pls furnish transpn Okolona to Montgomery if I am to protect 3rd trick there tomorrow 11:59 P. M. Thursday 10th."

On May 23rd Carrier wired Claimant as follows: "Go to Montgomery and work 3rd trick tomorrow night 11:59 P. M. 24th one night answer." On May 24th Claimant wired Carrier as follows: "Your wire, furnish me transportation and I will go to Montgomery tonight."

In all three instances the Carrier refused to furnish transportation and wired Claimant that another extra would be used.

Obviously the Claimant was not available. He made his availability subject to the reservation of transportation being furnished by Carrier.

This leads us to the next contention of Petitioner, namely, that Carrier is required to provide transportation to Claimant. We agree with Petitioner "the case hinges on the Carrier's refusal to provide transportation to an employe travelling on Company business."

If the Carrier is required to provide transportation to Claimant then Claimant would have been available. So, we must examine Rule 34 and the practice upon which Claimant is relying Rule 34 states: Transportation

> "Employes covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employes in service."

Other employes are not provided free transportation. (see Award — First Division Award 2843 — Stockton) There are other Awards that hold the same. So it would follow that Rule 34 does not require Carrier to furnish free transportation.

This leaves the question whether practice required Carrier to provide transportation. The record does not show the practice to be such on the other hand, it reveals that the practice is not to provide transportation for employes except under special circumstances which do not exist here.

Therefore it is the opinion of the Board that there is no rule in the Agreement nor practice which requires the Carrier to provide free transportation.

We are led to the conclusion for the foregoing reasons that there has been no violation of the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1962.