Award No. 11157

Docket No. TE-9157

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY (SOUTH-CENTRAL DISTRICT)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South Central and Northwestern Districts), that:

1. Carrier violated Agreement when it failed and refused to compensate F. M. Henderson, for 8 hours, at the pro rata rate of Telegrapher-Ticket Clerk position, Pomona, Calif., on November 17, 1955.

2. Carrier will be required to compensate F. M. Henderson for 8 hours, at the pro rata rate (as of November 17, 1955) position of Telegrapher-Ticket Clerk at Pomona, California.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between the Union Pacific Railroad Company, hereinafter called Carrier or Company, and The Order of Railroad Telegraphers, hereinafter called Employes or Telegraphers, governing wages and working conditions of employes covered thereby. The current agreement became effective on the 1st day of January, 1952.

This dispute was handled on the property in the usual manner to and including the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute having been handled in accordance with the Railway Labor Act, as amended, and not having been adjusted in accordance with the agreement is submitted to this Board for determination in accordance with such Act.

Prior to November 16, 1955, F. M. Henderson, claimant herein, was the owner of assignment Telegrapher-Ticket Clerk at Pomona, California. The assigned hours were 11:00 A. M. to 7:00 P. M. On November 16, 1955, he was assigned by bulletin, to position of Agent, Mira Loma, California. It is about 15 miles from Pomona to Mira Loma.

On November 15, 1955, Chief Dispatcher "LWF" issued order as follows:

to the incoming employe, and does not extend to or include time devoted to traveling from one point to another.

"Since the claim is based not on time consumed making transfers of station accounts, but is for time spent traveling, Rule 15(a) does not apply. The provision does not award claimants payments sought for traveling.

"The claim is denied, subject to the provisions of the Time Limit Rule."

In reference to the local settlements cited by the Organization, while consummated without knowledge of the Assistant to Vice President, inquiry made at the time of the handling of the instant case on the property developed in at least two of the cases that there was involved a transfer of station accounts, monies or records from the outgoing to the incoming employe. This is particularly true in reference to the two claims of September 4, 1951 and October 15, 1952. As a transfer of accounts was involved in these two cases, compensation for the day on which the transfer was made is provided for under the rule and was a proper allowance and conforms to the requirements of the rule. The case covered by the settlement of December 26, 1946 involved a territory over which the Assistant to Vice President in the present dispute does not have jurisdiction and he has no knowledge on what basis the issues were decided.

The two other cases involved a question of disputed facts, and in the interest of resolving the issues the employes were given the benefit of the doubt and gratuitously paid for loss of time incurred in going from one station to another. The rule does not provide for such gratuitous allowances, and when the matter was directed to the attention of the Assistant to Vice President such payments under Rule 15 were immediately corrected and stopped.

In any event, these two settlements, while disposing of individual claims, have no precedential value and were manifestly improper. The Organization has consistently taken the position before the Board and on individual properties that settlements on the property by the local chairman cannot be considered as binding upon the Organization and that such settlements are not valid interpretations nor do they establish any precedential value.

The claim should be denied because the rule relied upon does not support the contention of the Organization for the reasons heretofore stated.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant here, held regular assignment as Telegrapher-Ticket Clerk, at Pomona, with assigned hours of 11:00 A. M. to 7:00 P. M.

On November 1, 1955, Carrier bulletined a permanent vacancy, in Agency position at Mira Loma. The Claimant herein, applied for the position at Mira Loma, was approved as successful bidder by the General Manager and Traffic Department. He was instructed on November 15 to report at Mira Loma, and take over his new assignment on November 18th. Under instructions he was to be relieved from duty at Pomona, on November 16, at the time he completed his work there at 7:00 P. M.

The record shows that he performed no service for Carrier at either Pomona or Mira Loma, on November 17th, and he was not paid compensation for this date. It is pay for this date that is the basis of the claim here.

The Organization contends that Carrier refused to allow Claimant to work at Pomona, on November 17, 1955, and through no fault of the employe, he has been deprived of performing service on such date, and should be paid by Carrier at the pro rata rate for one day.

Carrier denied the claim for one day's pay, as shown by message to the employe as follows:

"F. M. Henderson

"Dead day for 17th was not allowed at Pomona. As you bid in by preference to Mira Loma, Rule 15 does not apply.

"Timekeeper
"L. H."

The record here shows that Carrier relieved Claimant at Pomona on November 16th, his sucessor was ordered to report Pomona on the 17th, and Claimant was instructed to report Mira Loma on the 18th.

Carrier contends that Rule 15(a) of the Agreement before us pertains only to the transfer of station accounts and further contends that such rule makes no provision for compensation when an employe moves from one position to another.

The record here shows that the employe moved to his position at Mira Loma by order and direction of Carrier. There is nothing in the rule that provides for the use of the word "transfer", to mean specifically that it applies to the transfer of station accounts. We believe the rule as written, applies to transfer or movement from one station to another, at the direction of the Carrier, at the rate of the position vacated. We agree with the conclusions of this Division as set forth in Award No. 5474.

Carrier further defends its position, and contends that in any event, the Hours of Service Law, would prohibit the Claimant from being used in service on November 17, the date Claimant was held out of service, Carrier says Claimant would have been ineligible to go to work at 8:00 A. M., at Mira Loma on such date. We cannot find anywhere in the record that Claimant was assigned or would be required to report for work at such hour. Without positive proof that a violation of the Hours of Service Law would have occurred had he worked such date on his assignment at Pomona, we cannot assume that such Claimant was or was not eligible for service. The Hours of Service Law as relied on by Carrier here, is not applicable to the docket here before us. The record before us does

not show what the assigned hours of the Claimant would have been at Mira Loma.

We believe that the contentions of the Organization and the Claimant here and the provisions of Rule 15(a) are applicable here. The claim should be sustained.

Carrier has not offered evidence that the Time Limit Rule is applicable to the facts before us.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and uopn 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 Carrier did violate the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1963.