

Award No. 13519

Docket No. MS-12879

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

H. L. POE

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: As provided by Section 3 of the Railway Labor Act, as amended, I submit herewith notice of my intention to file with the National Railroad Adjustment Board, for its consideration and disposition, dispute between myself and Chicago, Rock Island and Pacific Railroad Company.

Aforementioned dispute amount of \$9.58 arising out of my working agency Cole Camp, Missouri date of May 11, 1961 and as yet, receiving only four hours' (½ day's) pay.

Working as an extra telegrapher I became out of work 3 P.M., May 10, 1961 at Raytown, Missouri. As I knew beforehand when I was to be out of work, I had notified Carrier's Chief Dispatcher May 9, 1961 that I would displace younger extra telegrapher at Cole Camp (a distance of 100 miles from Raytown) and would protect job at Cole Camp effective 7:30 A.M., May 11, 1961.

Chief Dispatcher then issued instructions May 10, 1961 for me to report to Cole Camp, May 11 and make agents transfer, then protect agency dates of May 11 and 12, which I did.

Upon receipt of short paycheck I inquired of Carrier's Auditor-Disbursements as to reason for shortage and was advised I had not been paid 8 hours pro-rata time as worked, for date of May 11 but instead had been paid 4 hours for transfer of station accounts. As Rule 19-(c)-1 which provided for the displacement also provided that an extra telegrapher displacing thereby would not be compensated for transfer of station accounts, timeslip or claim for same had never been submitted by me.

Following is Rule 19-(c)-1 of Telegraphers' Agreement: "An extra telegrapher who is without work may displace any junior extra telegrapher who has been on an extra assignment five (5) full eight (8) hour days, exclusive of deadhead and transfer time. Telegrapher exercising seniority under this paragraph will not be compensated for time consumed in deadheading or transferring accounts."

Claim was handled with Chief Dispatcher for remaining 4 hours' pay and was advised that he intended I be paid 4 hours transfer time only. From thence claim was handled with Division Superintendent who advised his records showed me to have been properly paid. Lastly claim was submitted to Vice-President-Personnel, who declined payment account 4 hours already paid for transfer, thus his contention that there was no basis for any further payment. He was then notified by letter October 6, 1961 of my intention to submit dispute to you for adjudication.

Further brief to be filed by me within thirty days from date of this letter.

OPINION OF BOARD: Rule 34 (c) of the current agreement provides, as follows:

"(c) When an agent lays off upon his own request and is relieved by an extra employe, the agent will be paid for the day checked out by the traveling auditor and the extra employe will be paid for the day the agent is again checked in by the traveling auditor. When the two employes are authorized to make transfer of accounts themselves, subject to later approval by the traveling auditor, the outgoing employe will be paid for the day and the incoming employe will be paid one-half time for the day the transfer is made. In case where transfer is made at the request of the railway company and both employes are required to be present and on duty to make the transfer, then both will receive pay for the transfer time." (Revised, see Memo 16, pages 91 to 99.)

In the instant case, the Claimant was making the transfer of accounts as a result of the exercise of his seniority. He was the "incoming employe". He was paid one-half time for the day the transfer was made, and we find the contention of the Claimant that Rule 19 (c) 1, should apply has no validity. Therefore, in the circumstances found we must conclude the claim lacks merit and shall be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 29th day of April 1965.

DISSENT TO AWARD 13519,
DOCKET MS-12879

On the basis of the record before us this award is palpably erroneous.

The record shows that Claimant Poe, an extra employe, exercised a right accorded him under Rule 19 (c) 1 of displacing a junior employe on an unfinished assignment. This same rule provides unequivocally that a "Telegrapher exercising seniority under this paragraph will not be compensated for . . . transferring accounts."

The record further shows that Poe properly "protected" the assignment in question for two full days, May 11 and 12, 1961. He says he was paid only 4 hours for the day of May 11, and the Carrier did not challenge that statement. Instead, it says he was paid the 4 hours in accordance with provisions of Rule 34 (c).

Rule 34 (c), where applicable, provides how the two employes involved will be paid when transfer of accounts is effected as a result of an agent laying off of his own accord. If an auditor is required to be present the relieved employe is paid for the day he is checked out, and when he returns the extra employe is paid for that day. If no auditor is required the incoming employe is paid half time and the outgoing employe is paid for the day. The rule further provides that if both employes are required by the Carrier to be present both will be paid for the transfer time.

Thus it can be seen that the entire provisions of Rule 34 (c) relate to payment where transfer of accounts is involved. But Rule 19 (c) 1, which specifically provided the right which Poe exercised, also specifically provides that in such a case no transfer time payment will be made. Therefore, Rule 34 (c) could not apply, and there was no rule authority for only 4 hours' pay for the 8 hours of work on May 11.

The Carrier's sole defense was a contention, unsupported by any evidence, that there was no dispute between the Organization and the Carrier about the payment made to Poe. The record, however, does not indicate such to be a fact. There is nothing in the record to show that any officer of the Organization was ever consulted about this case by either the Carrier or the aggrieved employe.

The Railway Labor Act provides that this Board shall decide disputes not between "Organizations" and Carriers, but ". . . between an employe or group of employes and a carrier or carriers. . . ." So even if the Carrier's defense were based on good grounds it was inadequate. There was a dispute between an employe and a carrier.

It is entirely possible that the Carrier and Organization have an understanding that notwithstanding the provisions of Rule 19 (c) 1 an extra employe who displaces another extra employe will be paid for transfer of accounts in the same manner as is prescribed in Rule 34 (c). In that case Poe would have been paid for the day the original relieved employe returned to work, in addition to the day actually paid for for working and the 4 hours on May 11.

But as I have said, there is nothing in the record to establish either such an understanding or to indicate that Poe was paid an extra day.

It surely must go without saying that we have no authority to render decision on the basis of speculation or anything else not contained in the record.

The record shows that Poe was paid only four hours for a full day's work on May 11, 1961. On that same basis he had grounds for complaint.

By failing to observe the fundamental principles of deciding disputes on the basis of the record the majority has permitted the Carrier apparently to deprive an extra employe of \$9.58 which he earned by performing service in accordance with his contractual rights.

I refuse to be identified with such an improper decision in any way other than as a dissenter.

J. W. Whitehouse
Labor Member