

Award No. 16188
Docket No. TE-15391

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul G. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

**MISSOURI PACIFIC RAILROAD
(Gulf District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier refused to permit senior telegrapher L. E. Grayson the right to exercise seniority on a temporary vacancy at Weslaco, Texas, during the period July 1 to July 13, 1963, permitting junior telegrapher A. J. Lauder to assume the vacancy and forcing telegrapher Grayson to Kingsville, Texas, thereby depriving Mr. Grayson his rights under Rule 25(d) of the Telegraphers' Agreement.

2. Carrier shall compensate telegrapher L. E. Grayson in the amount of \$81.55 for expenses incurred for meal and lodging at Kingsville, Texas, which would not have been incurred had he been extended his Agreement rights.

EMPLOYEES' STATEMENT OF FACTS: Claimant L. E. Grayson was the senior extra employe who requested the Carrier assign him to the position at Weslaco, beginning July 1, 1963. Carrier originally assigned claimant L. Grayson to Weslaco but subsequently canceled the instructions and permitting junior extra employe Lauder to perform the service at Weslaco, July 1st. As a result of senior extra employe Grayson being required to perform the service at Kingsville rather than Weslaco, he incurred expenses of \$81.55 for meal and lodging, which would not have been incurred had he been permitted his right under the Agreement.

The claim was appealed to the highest officer and declined by him. The claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS:

1. This dispute involves the application of an Agreement between the Missouri Pacific Railroad Company and the employes thereof on the Gulf District represented by The Order of Railroad Telegraphers which became effec-

tive March 1, 1952, copies of which are on file with your Board. The Agreement is by reference made a part of Carrier's submission.

2. The claimant in this dispute, L. E. Grayson, is an extra telegrapher on the Carrier's Kingsville Division. At the time of this dispute, claimant was protecting the Agent position at Kingsville, Texas. The claimant requested of the Division Trainmaster that he be relieved as Agent at Kingsville, Texas and permitted to work the vacation vacancy of the Agent position at Weslaco, Texas, effective July 1, 1963. The claimant could not be relieved at Kingsville as there was no qualified relief to protect the Kingsville agency position and he was so advised and instructed to remain at Kingsville. Claimant did remain as Agent at Kingsville until August 15, 1963.

3. Under date of September 10, 1963, claimant submitted a form to Superintendent H. B. Davis requesting reimbursement for expenses incurred by him at Kingsville during the vacation period of the Agent at Weslaco, July 1 through July 13, 1963, amounting to \$81.55. Claimant contended that the claim for reimbursement for expenses was payable because he, the claimant, was not permitted to work the agency position at Weslaco as he had requested. No rule was cited to support such a claim.

In declining the claim on October 4, 1963, the Superintendent advised the claimant there was no rule providing payment of expenses to extra telegraphers protecting extra work.

4. The General Chairman in appealing from the decision of the Superintendent took the position that the extra telegrapher automatically becomes the same as a regular assigned employee when he protects the position of the regular assigned employee, and by reason thereof is entitled to expenses under Rule 13. Rule 13 is titled **Relief Work - Regular Employees**, and reads in part as follows:

"Regularly assigned hourly rated employees used for relief work shall receive the higher rate of the two positions . . . with necessary actual expenses while away from home station . . ." (Emphasis ours.)

5. The above rule is obviously applicable only to regular assigned hourly rated employees who are taken from their regular assignment to perform relief work. The claim was declined by the Director of Labor Relations who again pointed out to the General Chairman that there was no rule of the Telegraphers' Agreement providing for reimbursement of expenses to an extra telegrapher.

The General Chairman then cited Rule 14, which rule is titled **EMERGENCY SERVICE** and covers situations where regular assigned employees are taken from their assigned positions to be used at derailments, washouts, or similar emergencies. There was no emergency condition existing in the instant dispute.

6. This dispute was handled by the Employees through the proper channels on the property and is properly before your Board.

OPINION OF BOARD: The issue involved herein is whether or not Carrier violated the Agreement when it assigned junior extra telegrapher

A. J. Lauder to the vacant position at Weslaco, Texas, on July 1, 1963, rather than Claimant who was senior to said A. J. Lauder.

The facts are that a vacancy occurred at Weslaco due to the regular employe going on vacation. Claimant, who had been working at Donna, was ordered to report to McAllen inasmuch as employe H. E. Miller was ordered to return to Donna. Claimant upon hearing of the opening at Weslaco requested Carrier to assign him there. This request was granted and then revoked by Carrier on the following day. Claimant was then assigned to Kingsville, Texas and a junior extra telegrapher, A. J. Lauder was assigned to Weslaco. From the record there is no dispute that Claimant was senior to employe A. J. Lauder.

The rule controlling this dispute is Rule 25 - Extra Employes, and the pertinent provision reads as follows:

"(d) Senior extra employes when available and competent will be used in preference to junior extra employes but cannot claim extra work in excess of forty hours in his work week if a junior extra employe who has had less than forty hours' work in his work week is available. Senior extra employes will be allowed to displace junior extra employes. An extra employe who displaced another extra employe on position where a transfer is involved will be required to effect transfer of accounts during the last two hours of tour of duty on the day previous, unless other arrangements agreeable to all concerned are made. Transfer of accounts will be made by the employes involved without expense to the Railway Company. Under this Rule extra employes must accept the work to which entitled."

In order for a senior extra employe to be used by Carrier in preference to a junior extra employe, he must be "available and competent." The record clearly shows that Claimant here was available and there was no allegation or claim that he was incompetent. Carrier displaced Claimant at Donna, Texas effective July 1, 1963 and the position at Weslaco, Texas opened up on the same date. Claimant was therefore "available" for said position as required by Rule 25(d). Carrier attempts to excuse its position by making the assertion that inasmuch as junior extra employe Lauder was incompetent to fill the job at Kingsville, Carrier was compelled to assign employe Lauder at Weslaco rather than Claimant. No evidence was adduced by Carrier to show that employe Lauder was incompetent to handle the Kingsville job. Mere assertions are not sufficient to prove that the Agreement was not violated.

Therefore, inasmuch as Claimant was "available and competent" for the position at Weslaco, and was senior to employe Lauder, who was assigned to the job at Weslaco, Carrier violated the Agreement and the Claim must be sustained.

In regard to damages, Claimant is entitled to damages sufficient to make him whole, and therefore he is entitled to be reimbursed for expenses of \$81.55 incurred by him as a result of being assigned to Kingsville rather than Weslaco. See Award 16012.

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 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

That the Agreement was violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of April 1968.