

Award No. 16981

Docket No. TE-15966

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

UNION PACIFIC RAILROAD COMPANY
(Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the terms of an Agreement between the parties hereto when it refused to permit TCPO J. R. Zamrzla to step-up from his regular assigned position of 3rd shift TCOP "AN" Office, Hastings, Nebraska, to 2nd shift TCOP "AN" Office, Hastings, Nebraska, October 1 through October 16, 1964, per Rule 35(c).

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate J. R. Zamrzla eight (8) hours at the time and one-half rate for each date he was held off the 2nd shift position October 4 through October 16, 1964.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Union Pacific Railroad Company (Eastern District), hereinafter referred to as Carrier, and its employees in the classes shown therein, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as the Union, effective November 1, 1962, and as amended and supplemented. Copies of said Agreements are available to your Board, and are, by this reference, made a part hereof.

The positions involved in this dispute are listed at page 12 of the parties' Agreement under "AN" Office, Hastings, Nebraska. For ready reference the listings read:

"Location	Position	Rate Per Hour
Hastings 'AN'	TCPM.....	\$2.6688
	TCPO.....	2.6088"

The Second and Third Trick TCPO positions carry the same rate and, consequently, the Second Trick position could not offer a pay advantage to the claimant. Zamrzla worked his Third Trick TCPO position every day during the claim period and suffered no loss in compensation.

Because Zamrzla was not permitted to step up to the Second Trick vacancy, claim was filed for eight hours at the time and one-half rate for each day October 4 through October 16, 1964.

The handling of this dispute on the property is set forth in the following letters between representatives of the Organization and representatives of the Carrier:

CARRIER'S EXHIBIT A - Letter dated November 16, 1964 from General Chairman Goldsmith to Carrier's Assistant to Vice President N. T. DeLong.

CARRIER'S EXHIBIT B - Letter dated January 15, 1965 from Assistant to Vice President DeLong to General Chairman Goldsmith.

CARRIER'S EXHIBIT C - Letter dated January 27, 1965 from Assistant to Vice President DeLong to General Chairman Goldsmith.

CARRIER'S EXHIBIT D - Letter dated February 1, 1965 from General Chairman Goldsmith to Assistant to Vice President DeLong.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier operated an "AN" office at Hastings, Nebraska. The first shift was classified as TCPM (Telegrapher-Clerk-Printer-Mechanician) and was held by L. H. Jaixen with assigned hours of 8:00 A. M. to 4:00 P. M. The second and third shifts were classified as TCPO (Telegrapher-Clerk-Printer-Operator). The second shift was assigned to K. M. Chraft, with a seniority date of April 10, 1943 and assigned hours of 4:00 P. M. to 12:00 Midnight. Claimant J. R. Zamrzla, with seniority date of May 23, 1961 was the occupant of the third shift with assigned hours of 12:00 Midnight to 8:00 A. M. There was also a rest day Relief Position with headquarters at Hastings, designated as Relief Position TCPM-TCPO No. 15, occupied by D. V. Roecker with seniority date of August 26, 1960. Jaixen was assigned vacation from October 5 through October 16, 1964. Chraft requested and was granted permission to step up to the first shift vacancy. Claimant Zamrzla requested to step up to second position, but was refused. Second position vacancy was filled by Telegrapher Kruse and Claimant was held on the third shift. This action resulted in the instant claim for compensation for 8 hours at the time and one-half rate for each day Claimant was held off second shift (October 4 through October 16).

The pertinent part of the Agreement is contained in Rule 35(c), which is as follows:

"Except as provided in paragraph (a) of this rule and when the regular assigned relief agent or relief leverman is not available, temporary vacancies may be filled by advancing the regular force

in an office or station according to seniority and qualifications if they so desire. * * *

The Organization contends that the word "may" as contained in Rule 35(c) above, confers an option on the Employee only, to move up or not move up as he desires. The Organization contends that the Carrier has no discretion in the event the Employee desires to exercise the option to move up. It has been admitted by both sides that a relief employee was available.

The Carrier contends that the word "may" as contained in Rule 35(c) above confers an option on the Carrier to move the employee up or not to move the employee up, as the Carrier so desires; that Rule 35(c) is not a mandatory provision on either party; that if the word "will" had been used in place of the word "may" in Rule 35(c), neither the employee or the Carrier would have had discretion. Carrier also contends that the relief man available was not qualified.

It is the opinion of this Board that the word "may" is permissive to both the Carrier and the employee. It is also the opinion of this Board that the "filling" of a vacancy is ordered by the Carrier, and that the Carrier has the sole prerogative in "filling" a vacancy. In other words, the Carrier has an election or option under Rule 35(c) to move a man up to fill a temporary vacancy. If the Carrier exercises this election or option, then the employee would have the option to move up or not to move up to fill the temporary vacancy as he so desired. The vacation vacancy does not obligate or permit or make mandatory the moving up of an employee. The word "may" is permissive in nature, and absent provisions to the contrary, this word must be interpreted as being permissive to both parties signatory to the Agreement.

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 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 20th day of February 1969.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.