

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY

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

1. Carrier violated Rule 25 of Telegraphers' Agreement by failing to use Troy Martin, Telegrapher, who was ready and willing to work, and instead thereof used junior extra employees on the following days:

August 2, 1964 junior extra man at Taylor

August 3rd and 4th junior man at Thorndale

August 5th junior extra man at Taylor

August 31st junior extra man at Thorndale

September 1, 2, 3 and 4 junior extra man at Thorndale

September 5th junior extra man at Austin

September 7, 8, 9 and 10 junior extra man at Thorndale

2. Carrier shall compensate telegrapher Troy Martin 8 hours each date of violation at the prevailing rate of the position to which he was entitled.

EMPLOYEES' STATEMENT OF FACTS: Claimant Telegrapher Troy Martin is regularly employed as an extra Telegrapher on the Palestine Division of the Missouri Pacific Railroad (Gulf District). Mr. Martin holds a seniority date of July 8, 1963. Prior to the dates in question in this claim, Telegrapher Martin had finished an assignment at New Braunfels and was permitted to return to his home without being informed of the forthcoming vacancies hereinabove listed. Instead of complying with Rule 25 of the Agreement, Chief Dispatcher M. H. Cunningham instructed the following junior extra employees to protect the vacancies, as listed below:

August 2, 1964 — Telegrapher J. R. Ferrell, who holds seniority date of July 15, 1963, worked at Taylor, Texas.

Under the provisions of Rule 25, claimant could have made a request to displace either of the junior men but he did not avail himself of this opportunity.

In view of the foregoing, there is no justification for changing the decisions given you in our letter dated March 5, 1965, declining the claim.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: The Claimant in this case, Mr. Troy Martin, was regularly employed as an extra Telegrapher on the Palestine Division of the Carrier. He finished an assignment at New Braunfels, Texas on August 1, 1964 and returned home. Prior to that time, J. R. Ferrell, another extra Telegrapher and junior in seniority to Martin, had been assigned to work at Taylor, Texas, and Mr. Ferrell continued to work at Taylor past August 1, 1964. Also prior to August 1, 1964, Mr. Carl Brockman, another extra Telegrapher and also junior in seniority to Martin, had been assigned to work at Thorndale, Texas, and Mr. Brockman likewise continued to work at Thorndale past August 1, 1964. Martin was called back to New Braunfels on August 6, 1964, and makes claim herein for pay for August 2, 3, 4 and 5, 1964 on the basis that Ferrell and Brockman, both junior to him in seniority, were working on those days.

Martin was again displaced at New Braunfels on August 29, 1964 and returned home. Brockman was still working at Thorndale and Ferrell was working at Taylor as of August 29, and both of them continued to work at their respective locations past that date. Martin was called to work at Austin, Texas on September 11, 1964, and makes claim herein for pay for August 31 and for September 1 through September 10, 1964 on the basis that junior telegraphers to him were working on those days. [There is some confusion in the Record concerning September 5, 1964 as to whether the claim is related to a junior Telegrapher to Martin working at Austin, Texas or at Taylor, Texas. However, in any case, there is no evidence in the Record that a vacancy occurred at either Austin, Texas or Taylor, Texas during the time between August 29, 1964 when Martin was displaced at New Braunfels and September 11, 1964 when he started work at Austin.]

The Claimant alleges a violation of Rule 25(d) in that the Carrier did not use him on the dates claimed in preference to junior extra employees. The pertinent portion of Rule 25(d) relied upon reads as follows:

"(d) Senior extra employees when available and competent will be used in preference to junior extra employees but cannot claim extra work in excess of forty hours in his work week if a junior extra employee who has had less than forty hours' work in his work week is available. Senior extra employees will be allowed to dispute junior extra employees. . . ."

The Carrier defends against the assertion of the Claimant by pointing to Rule 25(b) and contending that Rule 25 must be read in its entirety and that Rule 25(d) relied upon by the Claimant must be interpreted in the context of the entire Rule 25. Rule 25(b) reads as follows:

(b) Extra employes completing an assignment shall be notified by the Carrier upon request the positions upon which they may displace."

Thus, the Carrier contends that if Claimant had requested information of the Carrier as to the positions in which junior telegraphers to the Claimant were working while Claimant was displaced, he would have been so informed and the Claimant could have asserted his right to displace those junior telegraphers. However, asserts the Carrier, it was not its contractual responsibility to inform the Claimant without the Claimant's requesting the information as to the positions in which junior telegraphers to the Claimant were working. Lastly, asserts the Carrier, no vacancy occurred during the period that Martin was not working; that had a vacancy occurred, the Carrier would have been contractually required to notify the senior extra telegrapher on layoff of the vacancy so that he could assert his right by virtue of his seniority to the position.

The Board is of the belief that the Carrier's position is sound and that Rule 25(d) cannot be read in isolation from the other provisions of Rule 25. Rule 25(b) clearly requires extra employes to request information as to the positions upon which they may displace. This the Claimant did not do and his failure to do so is fatal to his claim. Had a vacancy occurred when Martin was on layoff, the Carrier would have been required to notify Martin of the vacancy so that he could have asserted his seniority right to fill the vacancy. However, there is no evidence in the Record that any such vacancy occurred. Consequently, the claim will 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 23rd day of April, 1969.

Keenan Printing Co., Chicago, Ill.

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