



Award No. 18233

Docket No. TE-18223

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, 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 Company (Eastern District), that:

1. Carrier violated the Agreement when it failed and refused to compensate Telegrapher-Clerk Sherman F. Ball for eight (8) hours for the calendar day of December 15, 1967, lost in transferring from the 4:00 P. M. to 12:00 midnight telegrapher-clerk's position at Rock River, Wyoming to Relief Position No. 28 which relieves between Rock River, Wyoming and Hanna, Wyoming.

2. Carrier shall compensate Mr. S. F. Ball for eight (8) hours' pay at the pro rata rate of pay of the 4:00 P. M. to 12:00 midnight telegrapher-clerk's position at Rock River, Wyoming.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based on various provisions of the collective bargaining Agreement, effective November 1, 1962, as amended and supplemented, between the Transportation-Communication Employees Union and the Union Pacific Railroad Company (Eastern District).

The claim arose when Claimant, after being displaced by a senior employe through the exercise of seniority and displacing a junior employe, lost one day's pay transferring to his new position. Because of this loss Claimant requested Carrier to compensate him therefor as provided in the Agreement.

Carrier refused to do so contending, at first, that Claimant's loss was due to exercising his seniority in displacing a junior employe after being displaced by a senior employe when Carrier initiated a reduction in forces. Carrier later abandoned this contention and insisted that payment for time lost due to transfer is made only when an employe suffers an unavoidable loss due to traveling when changing positions. It also took the position that Claimant's loss was due to the Federal Hours of Service Law and under such circumstances the rule relied on cannot support the claim.

(c) Employees relieving other employees in the same station or office in accordance with Rule 35, will receive no allowance for time lost in such transfer, nor for time worked outside of regular assignment."

This claim was found to be totally lacking in merit and declined.

The Agreement between the parties is the Agreement effective November 1, 1962 (hereinafter referred to as the "Agreement").

The handling of this dispute on the property is set forth in correspondence between representatives of the Carrier and the Organization, which has been reproduced and attached as exhibits as follows:

CARRIER'S EXHIBIT A -- Letter dated January 20, 1968, from General Chairman Goldsmith addressed to Assistant to Vice President J. H. Kenny appealing claim on behalf of S. F. Ball for 8 hours' pay at the pro rata rate for December 15, 1968.

CARRIER'S EXHIBIT B -- Letter dated March 20, 1968, from Assistant to Vice President J. H. Kenny to General Chairman Goldsmith which contains Carrier's declination of the claim.

CARRIER'S EXHIBIT C -- Letter dated April 26, 1968, from Assistant to Vice President Kenny to General Chairman Goldsmith confirming the fact that conference was held on April 23, 1968, and that the Carrier's declination of March 20, 1968, was reaffirmed.

CARRIER'S EXHIBIT D -- Letter dated April 28, 1968, from General Chairman Goldsmith to Assistant to Vice President Kenny offering further interpretation of Rule 15(a) and advising that the dispute would be progressed to the Third Division, NRAB, for adjudication.

CARRIER'S EXHIBIT E -- Letter dated May 9, 1968, from Assistant to Vice President Kenny to General Chairman Goldsmith furnishing additional NRAB decisions negating such claims and reaffirming Carrier's declination of March 20, 1968.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the regularly assigned second shift telegrapher-clerk at Rock River, Wyoming when he was displaced by a senior employe on December 15, 1967. Claimant then displaced on Relief Position No. 28 at Rock River on Sunday, December 17, 1967.

Claimant is claiming one day's pay for not being able to work December 15, 1967 on account of being displaced from his regular position and transferring to a newly acquired position through the exercise of seniority.

Claimant relies on Rule 15(a) of the Agreement, which provides as follows:

"RULE 15.

STATION TRANSFERS — REGULAR EMPLOYES

(a) Regularly assigned employes transferred by order of the Railroad from one station to another, from one position to another, or to accept a bulletined position, will be allowed compensation on the basis of eight hours for each day while making transfer, at rate of position vacated."

In support of his position, Claimant cites this Division's Award No. 17149; however, we need not pass on the applicability of said Award to this dispute inasmuch as the evidence clearly shows that Claimant, on his own, chose not to report for work at his new job until December 17, 1967, and therefore such time lost was not due to the transfer but due to his own voluntary act of reporting for work on December 17, 1967. Thus we must deny the claim.

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 October, 1970.