

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuell, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SEABOARD AIR LINE RAILWAY**

DISPUTE.—"Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railway that J. S. Holland be assigned to the agency position at Chester, South Carolina, advertised for bids in the period ending July 13, 1933, and that he be paid the difference in salary he would have earned on the position from that date."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

An Agreement dated November 1, 1925, entitled "Schedule of Rules, Regulations, and Rates of Pay" was in effect, and existing between the parties at the time the dispute arose.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon. A hearing was had. The Third Division failed to agree upon an Award because of a deadlock. Paul Samuell was selected as a Referee to sit with the Division as a member thereof and make an Award.

J. S. Holland entered the service of the carrier October 3, 1912, as telegrapher, and satisfactorily occupied such positions including the agency position at Hanlin, Georgia, for nine (9) years, and the agency position at Bogart, Georgia, for ten (10) years.

While regularly assigned to the position of telegrapher-clerk on second trick at Whitmire, South Carolina, the agency position at Chester, South Carolina, became vacant on or about July 3rd, 1933, and was bulletined for bids to all employees on the Georgia Division covered by Telegraphers' Agreement, and Holland bid on, and was the senior applicant for this position, but was denied the assignment on the grounds he was not competent.

Rule 15 (a) of the Telegraphers' Agreement reads as follows:

"(a) Employees covered by this agreement will be regarded as in line of promotion, advancement depending upon the faithful discharge of their duty and capacity for increased responsibility. Where competent, seniority will have preference. Seniority begins at the time employee's pay starts, and will attach to the Division on which employed."

The sole issue in this dispute is the competency of Mr. Holland. While it is true that he has never occupied a position with so much responsibility as would be required at Chester, yet there is nothing in the record before us to indicate that he has not discharged his duties faithfully and competently during his many years of service at smaller stations, in fact, his employer has advanced him slowly but gradually. Under the ordinary seniority rule it is reasonable to expect that employees will seek advancement and in most instances the applicants will not be entirely familiar with the position, and, therefore, it is incumbent upon the applicant to demonstrate his ability and capacity for such increased responsibility when and if appointed.

The rule involved in this dispute is somewhat different from the ordinary rule of seniority contracts. Under it the carrier has the duty of selecting an applicant after proper bulletining, but with the proviso that "where competent, seniority will have preference." The carrier should be allowed a reasonable latitude

in making such decision, but the appointment of a junior employee should, in all fairness, carry with it the reasons for advancing a junior over a senior employee.

In this particular case the carrier has been content to assert that Mr. Holland lacked "education, personality, experience, and ability"; that he had a slight physical disability. The assigned reasons are quite general and are susceptible of evasion unless specific circumstances and facts are cited. With the exception of a slight physical disability (which does not appear to seriously interfere with the line of work contemplated), and the lack of knowledge of "the interchange work connected with the Chester Agency" (which does not appear to be particularly serious), the carrier has wholly failed to show why Mr. Holland is incompetent, and while this Division has repeatedly stated that it is reluctant to interfere with the judgment of the management, yet there are instances where this Division feels compelled to review the actions of the carrier as in the instant case.

AWARD

This Division, therefore, finds that J. S. Holland should be given an opportunity to demonstrate his competency and capacity for increased responsibility at the Chester, South Carolina, Agency, but since this Division is not convinced that Holland can handle the work in a satisfactory manner, it is, therefore, ordered that Mr. Holland be assigned to the Agency position at Chester on January 1, 1936, and unless the management of the Seaboard Air Line Railway shall on or before July 1, 1936, file with this Division a statement in writing (a copy of which shall be served upon Holland and also upon General Chairman of The Order of Railroad Telegraphers) setting forth definite reasons why Holland is not competent or does not have capacity for the increased responsibility, then Mr. Holland shall be entitled to the permanent assignment as agent at Chester, South Carolina; that this Third Division of the National Railroad Adjustment Board shall be the final arbiter of the question as to the qualifications of said Holland, and this Division reserves jurisdiction of this dispute until July 1, 1936, with the right to hear further evidence in support of any reason why Agent Holland shall or shall not be disqualified, but this Award shall not prejudice the right of the carrier to deal with said Holland under any rules with reference to discipline.

It is the further Award of this Division that the request for compensation by reason of difference in salary is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 15th day of October 1935.