

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE.—

"Claim of the General Committee of the Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that Mr. C. E. Warren was improperly displaced by Mr. Wm. Wilkes as agent at South Berkley on May 28th, 1932, and should be compensated for any net wage loss as result of this displacement."

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

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.

As a result of a deadlock, Willard E. Hotchkiss was appointed Referee. Upon request of carrier second hearing was held on June 30, 1936, at which the case was argued with the Referee sitting with the Division as a member thereof.

The parties have jointly certified the following statement of facts, and the Division so finds:

"Mr. Wm. Wilkes, with seniority date of August 16th, 1922, was displaced on April 11th, 1932, by Mr. C. E. Warren, seniority date August 28th, 1914. On May 26th, 1932, it was agreed that Mr. Wilkes' correct seniority date was March 15th, 1917, and on May 28th, 1932, Mr. Wilkes was restored to position of agent at South Berkley, displacing Mr. C. E. Warren, who in turn displaced Agent H. W. Adams at Stege."

An agreement bearing date September 1, 1927, as to rules and May 1, 1927, as to rates of pay is in evidence, of which the following rule is quoted:

"RULE 21 (c)

"A telegrapher losing his assigned position through no fault of his own, will, if ability is sufficient, be allowed one displacement of either the youngest assigned:

"Group (1)—Agent (Not required to telegraph).

"Group (2)—Agent (Small non-telegraph).

"Group (3)—Agent-Telegrapher.

"Group (4)—Telegrapher, the greater portion of whose hours are between 8 a. m. and 4 p. m.

"Group (5)—Telegrapher, the greater portion of whose hours are between 4 p. m. and 12 midnight.

"Group (6)—Telegrapher, the greater portion of whose hours are between 12 midnight and 8 a. m.

"provided the telegrapher displaced is his junior in the service. This privilege must be exercised within a period of ten (10) days after loss of assigned position, except as provided for in Rule 20."

William Wilkes entered the service of the carrier March 15, 1917, as assistant baggageman at South Berkley, California. Later he was promoted to the posi-

tion of agent at the same station, which position he held in March 1922 and April 1924 when U. S. R. L. B. Decision No. 757 and Interpretation No. 1 thereof were respectively promulgated. This decision and the interpretation had the effect of taking out of the Clerks' agreement and placing under the Telegraphers' agreement on this carrier small non-telegraph stations such as South Berkley. By agreement between the organization and the carrier, the incumbents of such positions were placed on the telegraphers seniority roster with seniority unimpaired. Through some error, Wilkes' seniority date was carried on the roster as August 16, 1922.

On April 11, 1932, C. E. Warren, in the exercise of his seniority right, filed a displacement notice against Wilkes as the youngest regularly assigned agent in Group 2, referred to in Rule 21 (c). He actually made the displacement on May 2, 1932. Following the displacement notice, Wilkes filed a protest against the seniority date of August 16, 1922, shown for him on the telegraphers' roster. An investigation of his complaint was made by the carrier and the general chairman of the organization with the result that on May 26, 1932, there was made and signed the following:

"MEMORANDUM OF UNDERSTANDING

"The undersigned, having inspected the personal record of William Wilkes of the Western Division, find that he last entered the employ of the Southern Pacific Company (Pacific Lines) on March 15th, 1917, performing service as Assistant Baggage man at Berkley on that date, and in accordance with the understanding reached in connection with seniority status of employees holding positions which were transferred to the scope of the Telegraphers' Agreement by United States Railroad Labor Board, Interpretation #1 to Decision #757, he is entitled to the above mentioned seniority date on the Telegraphers' Official Seniority Roster of the Western Division."

Upon determination of the fact that Wilkes' correct seniority date was March 15, 1917, instead of August 16, 1922, he was permitted to resume the position of agent at South Berkley, because with his correct seniority date he was not the youngest regularly assigned telegrapher in Group 2 under Rule 21 (c).

The employees contend that the correction of Wilkes' seniority date carried with it no retroactive effect, and that he should not have been permitted to displace Warren by resuming the position that he had held as Agent at South Berkley. They take the position that under Rule 21 (c) Wilkes lost his right to make a displacement ten days after Warren filed notice of displacement on April 11; that upon the expiration of the ten-day period he became an extra-unassigned telegrapher and could only exercise the privilege of bidding on positions as such, and that following the correction of his seniority date on and after May 26, 1932, he might have availed himself of the enhanced privileges that the corrected date afforded him, in acquiring a position.

Petitioners submit that the action of the carrier in this case is inconsistent with the action taken a few months later in the case of Telegrapher Adams who was displaced at Stege by Telegrapher Warren on account of Wilkes being permitted to return to South Berkley. Adams' date, it seems, was corrected to February 9, 1914, instead of February 23, 1919, which made him senior to Wilkes at South Berkley. Wilkes, it was urged, was permitted retroactive benefits through correction of his seniority date which privilege, petitioners submit, was denied to Adams.

Petitioners submit that the agreement contains no provision for making corrections in seniority data apply retroactively, that such application is not in accord with past practice, and that to give retroactive effect to such correction would make for confusion.

The carrier contends that Wilkes was wrongfully displaced from his position as agent at South Berkley on May 2, 1932, the date upon which Warren actually assumed the duties of the position; that Wilkes' actual seniority dated from March 15, 1917, notwithstanding that another date was shown on the seniority roster and that with seniority as of March 15, 1917, he was not at the time of displacement actually the youngest regularly assigned telegrapher in Group 2 (Rule 21 (c)). Therefore, he was not rightfully subject to displacement by Warren. The carrier further contends that it was entirely right and proper upon the determination of Wilkes' correct seniority date that he should resume the position from which he had been wrongfully displaced. The carrier further asserts that Warren did not suffer any loss of compensation as a consequence

of Wilkes' resumption of the position at South Berkley, but, on the contrary, that it so turned out that Warren's subsequent earnings were greater than they would have been had he remained at South Berkley and the right to resume the position been denied Wilkes. For this reason carrier implies that the request for a declaratory decision has the object of laying a basis for later cases rather than the object of vindicating the rights of Warren.

OPINION OF THE REFEREE.—There is sufficient indication that some of the arguments advanced by the parties in this case are based in part on considerations which do not appear in the record to justify a searching analysis of all the available facts if the case involved any substantial equities.

Since there is no pecuniary issue in the case it is not necessary to determine, on the one hand, whether the carrier showed a solicitude for Wilkes which did not square with general practice or, on the other hand, whether petitioners' prosecution of the case in behalf of Warren is a first step in the prosecution of other claims.

The basic purpose of rules is to establish rights and redress wrongs under agreements, and judicial bodies are usually averse, except under special circumstances, to rendering abstract judgments concerning subject matter which involves no substantial equities. On the other hand, omission to render such judgments should not be invoked to prejudice later issues which do involve substantial equities.

AWARD

1. Claim dismissed for lack of equity.
2. Lack of equity makes the case an unsuitable channel for any interpretation of the agreement, and no interpretation is contained in this decision.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest: H A JOHNSON

Secretary

Dated at Chicago, Illinois, this Thirteenth day of October, 1936.