

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines) that G. J. Oliver, the senior qualified applicant for the position as agent at Manteca, Calif., in December 1934, be assigned thereto and compensated for any difference between the amount he has earned elsewhere and what he would have earned at Manteca since his junior, in seniority, was assigned thereto."

STATEMENT OF FACTS.—The employes submitted ex parte the following statement of facts:

"Position of agent-telegrapher, Manteca, Western Division, was vacant and bulletined in December 1934. G. J. Oliver with a seniority date of April 21st, 1913, was the senior bidder for the position. C. W. Wheeler with a seniority date of November 15, 1917, was assigned the position."

The carrier's statement of facts was incorporated in the statement of its position as set forth below.

An agreement between the parties bearing effective date of September 1, 1927 [Wage Scale effective May 1, 1927], was placed in evidence, and the specific rules cited as bearing upon the disposition of the dispute were as set forth below in the positions of the parties.

POSITION OF EMPLOYES.—The contentions of the employes were submitted as follows:

"1. Exhibits 'A' to 'Z-4', inclusive, are attached to and made a part of this brief.

"2. This claim was filed and is being prosecuted under Rule 19 (a) and (b):

" 'RULE 19

" 'QUALIFICATIONS FOR AND BULLETINING OF VACANCIES

" '(a) 'Telegraphers will be regarded as in line of promotion, advancement depending upon faithful discharge of duties and capacity for increased responsibility. Where ability is sufficient seniority will govern.

" '(b) The Company, through the proper official, will determine the fitness of telegraphers to fill all positions in this agreement.

" 'Any telegrapher feeling dissatisfied on account of such decision will have the right of appeal to his Superintendent and if still dissatisfied with decision may make written appeal of his case direct or through the Order of Railroad Telegraphers in regular order to the General Officials of the Company.'

and that portion of Rule 44—

" 'Where positions are designated by two stars (**) the concurrence of the Traffic Department shall be secured to appointments before assignments are made.'

"3. Rule 19 (a) and (b) takes precedence over that portion of Rule 44 applicable in this case. Faithful discharge of duties and capacity for increased responsibility are the governing factors in arriving at the fitness and ability of applicants. One other important feature is the proviso that—

are best qualified for the position, and that the Carrier in doing so complied with the *spirit and intent of the rule*.

"6th. That in declining to appoint Mr. Oliver to the position of agent at Manteca the Carrier acted in good faith, without bias or prejudice and without any disposition to purposely or carelessly disrespect the rules as well as the spirit and intention thereof, of Telegraphers' current Agreement."

OPINION OF BOARD.—The seniority rules of collective agreements are designed to safeguard fundamental rights of the employees, and it is important that these rules be observed carefully and in good faith. It is also important, however, that the carrier be not deprived of such discretion in choice of personnel as is reserved to the management by these very rules.

In the instant case Rule 19 specifies that the advancement of telegraphers will depend upon "faithful discharge of duties and capacity for increased responsibility," and it definitely provides that "where ability is sufficient, seniority will govern." While seniority is thus to be given controlling recognition where the necessary qualifications are present, it is clear that the right of seniority is not established as an absolute right—that faithful discharge of duties, capacity for increased responsibility, and sufficiency of ability are also relevant considerations. Moreover, it is expressly provided that "the Company, through the proper official, will determine the fitness of telegraphers to fill all positions," the right of appeal reserved in the rule being from one carrier officer to another, up to the general officials of the Company. This does not mean, of course, that the carrier's right to determine questions of fitness may be exercised arbitrarily, to defeat the letter or spirit of the agreement; but neither does it vest in this Board authority to substitute its judgment for that of the carrier where the rule is applied in good faith and on the basis of substantial evidence of want of fitness on the part of the particular employee who deems himself aggrieved.

This view of the situation is strengthened by the provision of Rule 44, expressly applicable to the double-starred position here involved, that the concurrence of the Traffic Department must be secured to appointments of this character. This special rule was obviously intended to accord greater latitude to the carrier with respect to double-starred positions than is accorded to it by the general rule applicable to all positions—the question of fitness from a traffic standpoint being particularly held in view, with express provision for securing the judgment of the Traffic Department. While the matter of seniority is not mentioned in this rule, it does not mean that the Traffic Department may arbitrarily withhold its concurrence, without regard to the intent of seniority rules, since Rule 19 is applicable to all stations, and Rule 44 merely adds a special requirement in the case of double-starred positions. Where, however, both rules have been applied in good faith and on the basis of substantial evidence as to want of fitness, the unwillingness of the Traffic Department to accede to the appointment must of necessity become a relevant consideration, else no purpose whatever would be served by this special rule. The only question, then, is whether there was just basis for rejecting the application of the claimant.

The evidence discloses that his application for the position was received along with those of five other telegraphers and that it was given careful consideration. There is no showing of bias or prejudice, or of any intent to defeat the letter or spirit of the seniority rules. The Traffic Department declined to give its concurrence to his appointment solely on the ground of want of fitness for the increased responsibilities involved in this position, and there is ample evidence of record to support its judgment. Under these circumstances there was no violation of the rules of the agreement, and there is no adequate ground for disturbing the action of the carrier.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 evidence of record discloses no violation of the agreement or any adequate ground for disturbing the action of the carrier.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1937.