

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Spencer, 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 on the Southern Pacific Company (Pacific System), that Telegrapher J. R. Griffith was unjustly denied displacement of the puncher-clerk at Tucson, January 4th until August 31st, 1934, in violation of the Telegraphers' contract of agreement and that he be compensated for the monetary amount of the difference between what he earned on other positions and what he would have earned during that period had he been allowed the displacement in question."

EMPLOYES' STATEMENT OF FACTS: "Telegrapher J. R. Griffith sought to displace an employe in 'UN' Telegraph Office, Tucson, under Paragraph (e) of a certain mediation agreement designated as Case GC-781 and dated San Francisco, Calif., June 9th, 1933, as of January 4th, 1934 and was denied the displacement on instructions of Assistant Superintendent of Telegraph, R. E. Steere, that the position belonged to a puncher."

CARRIER'S STATEMENT OF FACTS: "Tucson 'UN' Telegraph Office, located at Tucson, Arizona, is under the jurisdiction of Superintendent of Telegraph, A. W. Flanagan.

"On January 23, 1935, extra Morse Telegrapher J. R. Griffith requested permission of Superintendent of Telegraph A. W. Flanagan to displace extra unassigned puncher Fred. B. Jackson, working on a duplex and/or multiplex automatic printer machine in Tucson telegraph office (See Carrier's Exhibit 'A').

"On June 9, 1933, this Carrier entered into an agreement (known as Mediation Case GC-781) with its employes who are represented by The Order of Railroad Telegraphers, which prescribes the class of employes who shall be used to perform extra unassigned work on duplex and/or multiplex tape printer machines, also makes provisions for allocating other work on such machines, and provides what employes are privileged to make **displacement** on such machines, likewise the conditions under which displacements may be made. Sections 2 (d) and (e) of said Agreement are as follows:

'(d) Except as provided in Section (b) extra unassigned work on the transmitting (puncher) side of duplex and/or multiplex automatic tape printer machine shall be awarded to an extra qualified puncher who is available in the office where work occurs. If qualified puncher is not available as herein provided, the work will be awarded to an extra Morse telegrapher who is qualified to punch, and is available in the office where the work occurs, until such time as a qualified puncher is available in the office for the extra work.'

automatic tape printer machine, shall be awarded to a qualified extra Morse telegrapher who is available in the office where the work occurs. If a qualified extra Morse telegrapher is not available, as herein provided, the work will be awarded to an extra qualified puncher, available in the office where work occurs, until such time as a qualified extra Morse telegrapher is available in the office for the work.'

Section 2 (e) is quoted in Paragraph 3 of Statement of Facts (supra).

"Will the Board please observe that Section (e) above quoted refers to work which is confined to the receiving side of duplex and/or multiplex automatic tape printer machine."

"Reference has been made to Paragraph (d) of Mediation Settlement dated San Francisco, June 9, 1933, copy of said Mediation Agreement being attached as Carrier's Exhibit 'B', Section (d) thereof has been quoted (supra). Under the provisions of Section 2 (d) of said Agreement, Telegrapher Griffith, being an extra Morse telegrapher, and irrespective of his qualifications to punch, was not entitled to displace extra puncher Jackson.

"The requirements of the Carrier that applicants qualify for position of Printer Clerk are reasonable and just; such a requirement is a prerogative of the Management and has been agreed to for the employees by their representative, The Order of Railroad Telegraphers.

"We have shown by competent and conclusive evidence, as reflected by statements and exhibits herein contained that, Telegrapher Griffith has been given every opportunity to comply with the regulations of the Carrier in taking the necessary test. The Carrier has always been and is now ready and willing to accord Telegrapher Griffith such opportunity.

"We have likewise by competent and conclusive evidence, shown that Telegrapher Griffith has consistently, arbitrarily, and sometimes in violent language, (Exhibit 'R') declined to take the prescribed test, but notwithstanding, he now seeks to penalize the Carrier for alleged loss in earnings, regardless of whether he is qualified to punch, likewise in violation of Section 2 (g) of Mediation Agreement, Case GC-781 (Carrier's Exhibit 'B-1').

"Based on the facts herein contained, Carrier contends there is no basis or justification for the claim submitted and respectfully urges that same be denied."

OPINION OF BOARD: Whether the work involved in this dispute was transmitting or a combination of receiving and transmitting within the meaning of the Mediation Agreement of June 9, 1933, is a question on which the record presents sharply conflicting evidence. It is not necessary, however, to determine this question in sustaining the view taken by the Division in this controversy. Assuming that the work, as urged by the carrier, was transmitting, the claimant was precluded from displacing the occupant of the position by Paragraph (d) of the Mediation Agreement. Assuming, as urged by the petitioner, that the work was a combination of receiving and transmitting, the Division is of the opinion that the claimant had not met the conditions of the agreement entitling him to displace the occupant of the position involved.

Rule 19 (b) provides that "the Company, through the proper official, will determine the fitness of telegraphers to fill all positions in this agreement." There is no doubt that under this provision the carrier may require employees to submit to reasonable tests and examinations for the purpose of determining their fitness for different types of work. That the privilege in question is not one to be exercised by the carrier in an arbitrary manner is evidenced by the further provision or the rule that "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."

When the claimant first asked for displacement on the position involved, a representative of the carrier rejected the request on the ground that the work in question belonged to a printer-clerk. Later, however, the carrier placed its refusal on the ground that the claimant was not qualified for the position, and had repeatedly refused to submit to the examination which the carrier customarily requires of employees before assigning them to the type of work in question.

The petitioner contends that the claimant was already qualified for the work by virtue of his previous experience, and should not have been required to take any examination as a condition of claiming the work in question. The record does indicate that the claimant had had some experience in operating duplex, multiplex, and teletype machines. It is to be remembered, however, that his experience in this respect was limited. Moreover, he repeatedly refused to submit to the examination, and on one or more occasions stated that he probably could not pass the examination. In these circumstances, the Division cannot say that the carrier acted unfairly or arbitrarily in requiring the claimant to take the examination.

The petitioner also contended that the examination as administered is unfair, and that the carrier uses it to discriminate against employees. The fact that the carrier did not originally challenge the fitness of the claimant is some evidence tending to show that the carrier may have been looking for an excuse to keep the claimant out of the position in question. On the other hand, the record indicates that within the past twenty-two months forty-four employees, including thirteen Morse operators, have satisfactorily passed this examination. If the claimant had taken the examination and failed it, the petitioner would have been able to present objective evidence to this Division in support of its charge. The evidence of record does not support the charge that the examination as administered was unfair, and that the carrier used it for the purpose of discriminating against employees.

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 employe involved in this dispute are respectively carrier and employe 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 does not support the claim of the Committee.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of July, 1938.