

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, Southern Pacific Company, (Pacific Lines) that Lena J. Smith was on or about December 4, 1932 improperly displaced from her regularly assigned position as non-telegraph agent, Alameda Pier, California and that she be reimbursed for all monetary loss sustained by her between the date of her illegal displacement at Alameda Pier and her return thereto in June, 1937."

**EMPLOYEES' STATEMENT OF FACTS:** "Telegrapher Lena J. Smith was the regularly assigned incumbent of the position of agent non-telegrapher on or about December 4th, 1932 and had been so assigned for several years. Telegrapher M. J. Cullen, who was regularly assigned to the position of agent, Ward Street, Berkeley, was removed from his position through the action of the Carrier in consolidating the position of agent at Ward Street, Berkeley, with the position of agent at University Avenue, Berkeley and placing both agencies so consolidated under the jurisdiction of the agent at University Avenue, Berkeley. This action of the Carrier was in violation of the agreement in effect. (See Docket TE-274, Award 388, National Railroad Adjustment Board, Third Division.) When removed from his assigned position through this violative action of the Carrier, Telegrapher Cullen displaced upon the agency position at Madison and when this position at Madison was abolished by the Carrier, Telegrapher Cullen displaced claimant in this dispute, Lena J. Smith, at Alameda Pier."

An agreement bearing date of September 1, 1927 (Wage Scale effective May 1, 1927) is in effect between the parties.

**POSITION OF EMPLOYEES:** "Exhibits 'A' to 'I' are attached to and made a part of this brief.

"Last conference held January 21st, 1938.

"The Committee requests that its briefs and exhibits submitted in Docket TE-274, Award 388, be considered a part of this brief for the purpose of establishing that the agencies at University Avenue, Berkeley and Ward Street, Berkeley, were consolidated in violation of the agreement in effect between the parties to this dispute. With the establishment of this conclusion, it follows that Telegrapher Cullen had actually no displacement rights under any circumstances, being rightfully still in possession of the position of agent at Ward Street, Berkeley, under the terms of the agreement. His displacement against Telegrapher Smith, granted by the Carrier was in violation of the agreement and she is entitled to consideration in the manner and amount provided for in the claim.

in the light of the Agreement to order the Carrier to compensate or reimburse an employe under any circumstances for other than net wage loss. Monetary loss is an improper claim, and under such a claim the claimant or Petitioner might insist upon payment of expense alleged to have been incurred by the claimant, such as:

- (a) Rent,
- (b) Storage,
- (c) Drayage,
- (d) Water,
- (e) Fuel,
- (f) Loss on stock market,
- (g) Wagering losses,
- (h) Any loss, irrespective of its nature.

"Petitioner in presenting claim in this case to the Carrier on October 14, 1937, failed to cite any rule of the Telegraphers' Agreement which has been violated, neither does he in his claim as outlined in President Manion's letter to Mr. H. A. Johnson, Secretary of your Board, cite any Agreement rule violation. He simply states that claim is based on Mrs. Smith's illegal displacement at Alameda Pier.

"That Mrs. Smith was not illegally displaced from position of Ticket Agent at Alameda Pier by Mr. Cullen on December 1, 1932, is definitely proven by the facts in the case as hereinbefore set forth, which are indisputable, and which conclusively show that she was legitimately displaced from her position at that station under Rule 21 (c), Telegraphers' Agreement, by a senior qualified employe who obtained the right of such displacement under the provisions of said rule, through the abolishment of his (Cullen's) position as Agent at Madison.

"In this case the evidence is conclusive that we could not deny Mr. Cullen the right to displace Mrs. Smith, his junior at Alameda Pier under Rule 21 (c), inasmuch as he possessed a displacement right and was qualified for the position, nor could that right be denied to any other senior agent who might have been assigned to the position of Agent at Madison instead of Cullen when the position was abolished November 30, 1932, without violating the provisions of said Rule 21 (c) which is free of any ambiguity. Any loss in earnings, therefore, that might have been sustained by Mrs. Smith, is attributable to the fact that her seniority did not permit her to obtain a position on which the earnings were comparable with earnings of Agent at Alameda Pier; also the fact that she requested and obtained leave of absence from May 1, 1934 to December 26, 1934. As hereinbefore stated the displacement of Mrs. Smith by Mr. Cullen, her senior, under Rule 21 (c) was proper, hence, it is apparent that there are no legitimate grounds for this claim. Petitioner's assertion that Mrs. Smith was illegally displaced is in no manner supported by the record."

**OPINION OF BOARD:** The Division is of the opinion that it has jurisdiction over this claim, and should dispose of it on its merits. The petitioner states that "this is one of several disputes pending and unadjusted awaiting the result of the prosecution of the dispute covered by Docket TE-274, Award 388. . . ." The carrier understood that the claim presented in Docket TE-274 was a test case, and that other claims would grow out of it if the petitioner secured a favorable award. Certainly the carrier cannot allege or prove that it was lulled into repose by reason of the petitioner's alleged failure to prosecute this claim with more diligence.

The Division reaffirms the principle of Award No. 388 in finding that the carrier acted in violation of the Agreement between the parties when it consolidated the position of agent at Ward Street with the position at University Avenue, and placed the consolidated agency under the jurisdiction of

the agent at University Avenue, thus wrongfully removing M. J. Cullen from his position at Ward Street. This action of the carrier gave Cullen no displacement rights under Rule 21 (c) at any other office or station. The assignment of Cullen to the office at Madison and its later abolition did not create in Cullen displacement rights which he did not previously enjoy. When, therefore, the carrier permitted Cullen to displace claimant Smith at Alameda Pier, it merely extended the wrong that it committed when it wrongfully removed Cullen from his position at Ward Street. While the disestablishment of the office at Madison was the immediate cause of Claimant Smith's removal from the position at Alameda Pier, the substantial and proximate cause was the action of the carrier in wrongfully removing Cullen from his position at Ward Street.

The statement of the claim is not improper. It is in harmony with previous claims in similar situations on which this Division has rendered awards. If the parties are unable to agree upon specific items of the loss which the claimant has sustained, they have the privilege of asking this Division to pass upon such disputed items.

**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 carrier acted in violation of the Agreement when it permitted M. J. Cullen to displace Lena J. Smith at Alameda Pier on December 1, 1932; and that the claimant should be reimbursed for monetary loss sustained by her as a result of such displacement.

#### AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Ill., this 8th day of March, 1939.