

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Pennsylvania Railroad, that (a) it was a violation of Part 1 of the Telegraphers' Agreement to assign to the vacancy in the agency at East Pittsburgh, Pennsylvania, a station on the Pittsburgh Division, an employe holding no seniority rights on the Pittsburgh Division when, at the same time, there were applicants for the vacancy from among employes on the seniority roster of the Pittsburgh Division who possessed the necessary qualification for the position and (b) that a sufficiently qualified employe on the Agents' roster of the Pittsburgh Division who made proper application for the position be assigned and compensated for any monetary loss he has suffered through failure of the carrier to assign him at the time the vacancy was filled."

EMPLOYES' STATEMENT OF FACTS: "The asterisk (*) Agency position at East Pittsburgh, Pa., became vacant August 1, 1939, due to the retirement of the former incumbent.

"Notice of this vacancy was issued to the Agents and Assistant Agents on the Pittsburgh Division on August 3, 1939, in conformity with Regulation 1-B-1 (c). Applications were received from various Agents and substitute Agents for consideration in assignment to this asterisk (*) vacancy.

"Effective October 1, 1939, A. D. Coleman, Supervising Agent-Division Operator, on the Renovo Division, was appointed to this position.

"The Local Chairman's request that J. A. Stouck, an Agent on the Pittsburgh Division who made application for consideration be appointed, and the General Chairman's request that an Agent on the seniority roster of the Pittsburgh Division be given consideration for assignment to the Agency vacancy at East Pittsburgh, were denied."

POSITION OF EMPLOYES: "An Agreement bearing date of May 1, 1938, as to Rules and Rates of Pay, is in existence between the parties to this dispute.

"The Scope of said Agreement covers the following classifications:

REGULATIONS AND RATES OF PAY
FOR THE GOVERNMENT OF
STATION AGENTS AND ASSISTANT AGENTS
CLASSIFIED HEREIN

"This Schedule of Agreement governing Agents and Assistant Agents, is known as Part 1, of the Agreement, containing all Regulations governing working conditions, and Rates of Pay for all positions contained therein.

CONCLUSION

"In the light of the foregoing it is respectfully submitted that the Carrier's action in appointing A. D. Coleman to the Agent position at East Pittsburgh, Pa. did not constitute a violation of the applicable Agreement, and that consequently neither J. A. Stouck nor any unnamed Claimant is entitled to be appointed to the position or to be compensated in any manner in connection with such appointment.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: The case is submitted under and controlled by the "Regulations" which were effective May 1, 1938. They seem not to have been printed but have been furnished us in mimeograph copies. Decision is based upon, and compelled by, the "Exception" following the Preamble and paragraphs (a) and (c) of 1-B-1 of Regulation No. 1. The "Exception" reads thus:

"It is recognized that the supervisory duties of positions, designated by an asterisk (*) in the Rate Schedule, require that, in filling such positions, consideration must be given to qualifications or eligibilities separate and apart from the ability and fitness referred to in Regulation 1-A-1. It is agreed that in filling such positions, the application of the advertising and seniority provisions of this Schedule will not apply, nor will they be construed to prohibit or restrict the Company in the appointment of Agents or Assistant Agents to such designated positions.

"Positions coming within the purview of the foregoing and designated by an asterisk (*) in the Rate Schedule, denote that the Agent or Assistant Agent is not normally required, during his entire daily tour of duty, in addition to his Agency duties, to perform routine duties usually performed by Clerical, Station or Telegraph Department Employees.

"The determination of whether a position hereafter established shall be designated by an asterisk (*) shall be in conformity with the foregoing."

Too clear for argument is the proposition that under that Exception, the carrier is immune from all "advertising and seniority provisions," in "filling" asterisk (*) positions. The simple reason is they are explicitly denied application to that process. To put the point beyond doubt, the rule goes on to declare that the advertising and seniority provisions will not "be construed to prohibit or restrict the Company in the appointment of Agents or Assistant Agents to such designated positions."

There is nothing in paragraph (c) of 1-B-1 which helps the claim. It does provide that when new positions or permanent vacancies occur in the designated positions "notice will be posted for the information of the Agents or Assistant Agents in the seniority district." It is significant that no one is to be asked to bid in response to such advertising. So again it is plain that this paragraph (c) of 1-B-1, in no wise restricts the freedom of action so explicitly granted the carrier by the Exception from the Preamble. It was so ruled in Award 1279 on Dec. 16, 1940. That ruling is adhered to.

If confirmation is needed, it is furnished by 1-B-1 (a). That rule declares that "new positions or vacancies" will be "promptly bulletined." But it again expressly excepts from that demand "positions designated by an asterisk (*)." What more is needed to buttress, to put beyond reach of reasonable denial, the right of the carrier to fill such positions without resort to the seniority and advertising rules? How could language make more plain the intention to give the carrier just that right?

The argument, for the claim, that under 1-B-1 (c), an appointment must be made from "the Agents or Assistant Agents in the seniority district," is self answering. It invokes the seniority rules which, it is plain, have no application. The posting is, as stated, for information. It is not an invitation for bids for the vacancy or new position to be filled.

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 employes involved in this dispute are respectively carrier and employes 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 no violation of the Agreement occurred.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1941.