

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 on The Pennsylvania Railroad that, G. W. Booty was improperly displaced from his position of Assistant to Train Director in 'Broad' Interlocking Station on November 20, 1939, by Operator J. B. McCord; that G. W. Booty shall be restored to his former position of Assistant to Train Director in 'Broad' Interlocking Station from which he was improperly displaced and be compensated for all wage loss suffered by reason thereof; and that all employes resultantly displaced by this improper act of the Carrier shall be restored to their former positions and be compensated for all wage loss suffered."

EMPLOYES' STATEMENT OF FACTS: "G. W. Booty held regular assigned position of Assistant to Train Director, at 'Broad' Interlocking Station, Philadelphia, Pa., with assigned hours 7:00 A. M. to 3:00 P. M.

"Effective November 20, 1939, Mr. Booty was displaced by Operator J. B. McCord, whose position was abolished in 'PO' General Relay Telegraph Office, Philadelphia, Pa., November 13, 1939. J. B. McCord made selection in writing to first trick Assistant to Train Director position in 'Broad' Interlocking Station held by G. W. Booty, and was permitted to displace Booty.

"G. W. Booty secured position on first trick Assistant to Train Director, 'Broad' Interlocking Station, by bid on last position made vacant and then advanced under Regulation 2-A-6 to the first trick position of Assistant to Train Director.

"J. B. McCord's seniority on the Philadelphia Terminal Division roster, Telegraph Department is; November 29, 1898.

"G. W. Booty's seniority on Philadelphia Terminal Division roster, Telegraph Department is; March 27, 1917.

"At 'Broad' Interlocking Station the following positions are governed by Regulation 2-A-6:

Train Director, 1st, 2nd and 3rd tricks.	3 employes.
Relief Train Director and Asst. Train Director.	1 employe.
Assistant Train Director, 1st and 2nd tricks.	2 employes.
Assistant to Train Director, 1st and 2nd tricks.	2 employes."

POSITION OF EMPLOYES: "An Agreement is in effect between the parties to this dispute, Regulations effective December 1, 1927 (Except as otherwise designated); Rates effective March 1, 1929, with 5¢ per hour added August 1, 1937.

is not entitled to be restored to his former position, nor is he, or any of the unnamed claimants entitled to be compensated for any wage losses suffered by virtue of displacement.

"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 issue is a characteristic one of seniority between two employes, with the carrier not much more than an interested bystander.

It is unquestioned that McCord was senior to Booty in their common seniority district. If that were all, no one would question McCord's right to displace Booty as he did here.

The opposing argument is put upon Regulation 2-A-6 which, so far as here applicable, reads as follows:

"When vacancies occur in Train Directors' and or Assistant Train Directors' positions they will be filled by advancing the regular force, Assistant Train Director to Train Director; Assistant to Train Director to Assistant Train Director; and the last position left vacant shall be advertised and filled in accordance with Regulations 1-A-1, and 2-A-1 to 2-A-3, inclusive."

True, that rule does treat the several train directors at each of the indicated towers as a unit. For what purpose? That question is answered by the rule itself. They are treated as a unit and positions filled "when vacancies occur" by advancing the regular force. When that process leaves the last position vacant, it shall be advertised in the usual manner. Obviously, that whole scheme applies only when a vacancy occurs. The rule cannot be read otherwise. No vacancy occurred here. McCord simply exercised his indisputable right of displacement, arising from his seniority status superior to that of Booty.

In short, that part of 2-A-6 upon which the claim is exclusively based has no application because there is absent from the case the condition precedent to it application. That is the occurrence and filling of a vacancy, as distinguished from displacement of an employe already filling a position by one of his seniors.

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 there was no violation of the Rule.

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.