

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that extra agent-telegrapher Floyd Ladner be paid the difference between what he earned as telegrapher-clerk at Corcoran, California, during September, 1939, and what he would have earned had he been used instead as agent thereat during the same period of time while said agency was vacant and/or on bulletin."

EMPLOYEES' STATEMENT OF FACTS: "An Agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute; copies thereof are on file with the National Railroad Adjustment Board.

"The Corcoran, California agency (a position within the Telegraphers' Agreement) rate of pay \$257.17 per month, became vacant September 1, 1939. Bulletin No. 18, dated August 27, 1939, advertised said position to telegraph schedule employes on that seniority district (Valley Division). Said bulletin closed 8:00 A. M. September 7, 1939.

"Extra agent and/or telegrapher Floyd Ladner, seniority date June 6, 1939, was the senior available extra employe and stood to catch the vacancy, however, he was not permitted to protect said vacancy; instead second trick telegrapher, W. R. Harbuck, occupying a telegraph position at Corcoran, assigned hours 4:00 P. M. to 12:00 o'clock Midnight, on instructions, protected said vacancy. Floyd Ladner was instructed to, and did, protect the Harbuck vacancy, rate of pay 76 cents per hour.

"Floyd Ladner transferred to the Valley Division from the Southern Kansas Division June 6, 1939. Prior to said transfer he was continuously employed on the Southern Kansas Division, May 28, 1925 to June 6, 1939. Telegrapher Harbuck, who protected the Corcoran agency vacancy, has a seniority date of July 31, 1927.

"A similar situation arose at Porterville, California (same seniority district) October 1, 1939, when that agency became vacant. In that instance the senior available extra employe, L. R. Hamilton, with a seniority date of April 15, 1937, was used to protect it. J. B. McArdle, with a seniority date of May 13, 1922 and regularly assigned as telegrapher at Porterville, was not permitted to protect said agency vacancy."

POSITION OF EMPLOYEES: "The Telegraphers' Agreement contains the following rules, which are hereby invoked by the Organization as authority for the claim, and which contain language unambiguous as to meaning and intent:

OPINION OF BOARD; During the period September 1-7, 1939 the agency at Corcoran was vacant and under advertisement. On September 7 at 8:00 A. M. the bids closed. The successful bidder, Welch, asked and was granted leave to October 1.

Since the temporary vacancy which arose September 1 was to be for less than 90 days the filling of it was covered by Section (d-3) reading as follows:

"(d-3) Temporary vacancies of less than ninety (90) days shall be protected from the extra list, except as otherwise provided in Section (n) of this Article. . . ."

Section (n), having reference to "a temporary vacancy known to be of two (2) weeks or more" did not apply, because, on September 1, the vacancy, so far as then known, was to last for one week only. Therefore, under Section (d-3), the carrier's duty was to fill the vacancy from the extra list. Instead of appointing Ladner, the senior man in the extra list (who is the claimant here) the carrier appointed Harbuck, the second trick telegrapher at Corcoran, and assigned Ladner to Harbuck's place.

The carrier's excuse for doing this was that Ladner did not have sufficient qualifications to fill the position of Agent at Corcoran. While Section (d-3) does not specifically mention qualifications—nor, for that matter, seniority or availability,—it is clear from a consideration of Article XX as a whole that an employee, to be entitled to fill a temporary vacancy from the extra list, must be the senior available qualified employee. The question, then, is whether the carrier, in passing on Ladner's qualifications, deliberately or carelessly evaded or disregarded the spirit and intention of the rules.

What was the spirit and intention of the rule embodied in Section (d-3)? It was evidently designed to help the men on the extra list by enabling them to fill short temporary vacancies, and the carrier's obligation was to appoint them to such positions if they were sufficiently qualified. This obligation in turn required the carrier to make a serious effort to weigh the sufficiency of their qualifications and to appoint them if they could do the work satisfactorily even though others not on the extra list might be thought to have superior qualifications. The question is whether the carrier disregarded these obligations.

(1) It was shown that Ladner, before coming to the Valley Division, had served for fourteen years on the Southern Kansas Division and had there acted as agent at some twenty-five points, **exclusive** of nine which are or were small non-telegraph stations or in charge of caretakers. Harbuck had had two years less service with the carrier than Ladner and had served at only twelve points on the Valley Division. It appeared that Ladner's total agency experience had consisted of four years and two months, but the carrier did not state how much total time Harbuck had spent as agent. Nor did the carrier, while minimizing the importance of the stations at which Ladner had served, describe the nature of the stations at which Harbuck had served.

(2) The next question is whether, in the light of his general experience just described, Ladner's qualifications were insufficient for the particular position at Corcoran. On behalf of the carrier two points were chiefly urged: (a) The importance of Corcoran was stressed; it had been a supervisory agency until September 1, 1939; the agency rate was the highest on the Valley Division during the period in question; the agent had under him a cashier, a stenographer-clerk and three telegrapher-clerks; the principal sources of shipment consisted of five grain and feed warehouses, two cotton gins and one feed pen, and statistics of the amount of freight were given. On the other hand, it appeared that the population of Corcoran was under

two thousand, and there was no showing either in the number of employes to be supervised or the volume of traffic to be handled, that Corcoran differed to such an extent from the previous agencies handled by Ladner that his qualifications for the position were not sufficient. (b) It was shown that Ladner had had only eighty days of service on the Valley Division; that only eleven of these days had been in agency service, and that that service was at a one man station. It was said, moreover, that traffic and other conditions on the two Divisions were not at all similar. On the other hand, the carrier nowhere pointed out in what respect the traffic and other conditions differed on the two Divisions, nor was there anything to show that in his admittedly short service on the Valley Division Ladner could not have familiarized himself with such differences as existed.

(3) Some indication of careless disregard by the carrier of the spirit and intent of the rule is furnished by two statements in the carrier's submission. One was that "the comparison of the two men is in favor of Mr. Harbuck," which is irrelevant since the question at issue was the sufficiency of Ladner's qualifications and not their absolute equality with Harbuck's; the other was that the carrier was not required "to fill permanent or temporary positions with employes whose abilities and qualifications are unknown or known to be lacking in such essentials." Nothing in Ladner's past record was shown to have been unsatisfactory, and the language just quoted gives the impression that the Valley Division authorities did not make a serious effort to inquire into Ladner's work on the Southern Kansas Division. This impression is strengthened by the carrier's failure to show in what respect traffic and other conditions differed on the two Divisions; to show, if such differences existed and were important, that Ladner could not have absorbed them in his short period of service in the Valley Division as agent or otherwise; to show what there was about the Corcoran agency which made Ladner's previous agency experience insufficient to cope with it; and finally to state what kinds of agencies Harbuck had served at or for what total length of time.

The case is an exceedingly close one, and we are fully mindful of the fact that we have neither the capacity nor the right to interfere with the carrier's judgment in the exercise of discretion in the large range within which it may operate. The record as a whole, however, leads us to conclude that the carrier carelessly disregarded the spirit and intent of the rule with respect to the use of men from the extra list, in that the Valley Division authorities did not seriously attempt to weigh Ladner's qualifications by reference to his previous record of service on the Southern Kansas Division.

With respect to the period September 7-30 we think that Ladner can make no claim. When Welch bid in the agency position on September 7, the temporary vacancy which arose September 1 was terminated. When Welch, having been appointed agent, asked for and was given leave of absence till September 30, a new temporary vacancy arose, and since it was known to be for two weeks or more it was properly fillable under Section (n) of Article XX. Under that Section Harbuck was properly appointed.

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 with respect to the period September 1-7, 1939 Section (d-3) was violated.

AWARD

Claim sustained with respect to the period September 1-7, 1939 and denied as to the balance.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of December, 1941.