

Award No. 2370
Docket No. TE-2169

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Alton Railroad, that Telegrapher T. Fowler be granted one year's leave of absence, effective as of May 8, 1942.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date February 16, 1929, as to rules is in effect between the parties to this dispute.

Telegrapher T. Fowler entered the service of The Alton Railroad under said agreement July 12, 1925, on the Western Seniority District, transferring his seniority in accordance with the provisions of Rule 7 of said agreement to the Eastern Seniority District May 8, 1942, retaining one-half of his seniority and was assigned seniority rating as of December 11, 1933.

Under date of May 8, 1942, Telegrapher Fowler made written request for one year's leave of absence in the following manner:

"Pleasant Hill, Ill., May 8, 1942.

Mr. W. R. Galloway, Jr., Supt.,
Bloomington, Ill.

Dear Sir:

Please grant me one (1) year leave of absence effective at once.
Authority 3d paragraph Rule 16.

Yours truly,

/s/ T. Fowler.

CC—E. E. Gentz (General Chairman)"

The third paragraph of Rule 16 of telegraphers' agreement provides:

"Telegraphers who have been in the service of the Railroad five or more years will upon request be granted one year leave of absence, retaining their seniority and will go to the extra list."

The Carrier denied Telegrapher Fowler's request by the following letter:

"THE ALTON RAILROAD COMPANY

May 18, 1942.

Mr. T. Fowler,
Operator
Pleasant Hill, Ill.

Dear Sir:

Replying to your letter of May 8th, advising that you are transferring your seniority from the Western Division to the Eastern Division, and asking for one year's leave of absence.

relieve the men at Venice Junction, College Avenue and Ridgely one day per week on account of lack of telegraphers and this is also true at Murrayville and Jacksonville.

"Of the fourteen unassigned telegraphers mentioned above, Operator Williams is working for a grain company at Lincoln and will work only on Sundays. Operator Fitzpatrick is working for the Western Union at Champaign and is not available to us, and it is, therefore, necessary that we close the record of these two men which will leave us only twelve unassigned telegraphers, and we have many calls from the regularly assigned men to be relieved which we find ourselves unable to grant."

The Carrier has shown that Operator Fowler was granted one year's leave of absence effective July 12, 1930, and a second one year's leave of absence effective November 1, 1941. Although he exercised the option granted to terminate the second one year's leave before its conclusion, it must still stand that he has been granted two one year leaves of absence. The Carrier maintains that in the case of the instant dispute it has complied with the provisions of Rule No. 16 even if interpreted in the most liberal sense.

The claim of the Employees that Telegrapher Fowler should have been granted a third one year leave of absence effective May 8, 1942, is without merit and should be denied.

OPINION OF BOARD: Telegrapher Fowler, who had been in the service of the Railroad more than five years, had been granted two one-year leaves of absence prior to May 8, 1942, on which date he requested a further one year leave. This request was denied by the Management. This claim is based upon the contention that under Rule 16 of the Agreement, Fowler is entitled to the requested one year leave of absence as a matter of right.

Rule 16 is as follows:

"Leave of absence will not be granted for more than ninety days, except in case of sickness, injury or to employees serving on committee business.

In such cases where leave of ninety days or more is granted, positions will be bulletined and filled in accordance with Rule No. 8, provided that—

Telegraphers who have been in the service of the Railroad five or more years will upon request be granted one year leave of absence, retaining their seniority and will go to the extra list.

Telegraphers in the service of the Railroad fifteen years or more will upon request be granted one year leave of absence, retaining their position one year.

Regular telegraphers returning to work after leave of absence will give at least eight hours notice."

Claimant relies upon the third paragraph of the rule, and contends that under this paragraph, after an employe has been in the service more than five years it is mandatory upon the Carrier to grant as many one-year leaves of absence as the employe requests. This contention, in our opinion, does violence to the language of the Rule, which simply provides that such employe, "will upon request be granted one year leave of absence." Neither can we believe that it was the intention of the parties when the Rule was adopted to provide that after five years' service an employe could indefinitely extend his employment in the Carrier's service and retain his seniority by the simple device of requesting one-year leaves of absence. If such were the intention, it should have been clearly expressed, which the language as used in the Rule fails to do.

The record discloses that the Carrier has on occasions granted to Fowler and other employes two or more one-year leaves of absence, but the record does not show that such leaves were granted by the Carrier other than voluntarily, and in some instances such leaves were granted only after the concurrence of the organization representing the claimant. Under these circumstances, the fact that the Carrier has granted two or more one-year leaves to an employe has little significance in the construction of the Rule.

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 no violation of the Agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1943.