

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that (a) the Carrier violated Rule 11 (b) of the Telegraphers' Agreement when it assigned Telegrapher George H. Levan, seniority date October 18, 1920, instead of Telegrapher Mary I. Sherk, seniority date October 11, 1918, to the second trick telegrapher position, Rutherford, Pa., as advertised by Bulletin No. 68 of December 9, 1938; and, (b) in consequence thereof said Carrier shall pay to Telegrapher Mary I. Sherk the wages she would have earned had she occupied said Rutherford position from December 29, 1938 (Twenty days subsequent to the date of Bulletin No. 68) to April 22, 1940 (the date she was assigned, by bid, to a position at Pine Grove, Pa.).

EMPLOYES' STATEMENT OF FACTS: An agreement between the parties, bearing effective date of July 1, 1924, is in evidence.

Under the provisions of the Telegraphers' Agreement, Mary I. Sherk established and retains a seniority date of October 11, 1918, and George H. Levan established and retains a seniority date of October 18, 1920.

For approximately nine (9) years, between 1918 and 1932, Miss Sherk occupied a telegraph position at Rutherford.

June 1, 1932, Miss Sherk and thirty-nine (39) other employees junior to her were furloughed account holding insufficient seniority and/or qualifications to occupy regular positions; the latter reason applying to Miss Sherk.

Bulletin No. 68 of December 9, 1938, advertised the second trick telegrapher position at Rutherford. Miss Sherk, the senior bidder, was not awarded the position; instead, George H. Levan, a junior bidder, was awarded the position.

Miss Sherk bid for and was assigned to a Telegrapher-Clerk position at Pine Grove, Pennsylvania, April 22, 1940, using her established seniority date of October 11, 1918, in doing so.

POSITION OF EMPLOYES: The 'Telegraphers' Agreement, in part, reads:

"Rule 1

"This schedule will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators) agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen and such agents as are specified in the wage scale."

(f) Trading of positions will not be permitted." (Emphasis supplied.)

The Carrier directs the Board's attention to Bulletin No. 68 (Exhibit No. 1) and to copies of the applications (Exhibit No. 2, 3 and 4) received in response to this bulletin; also to Bulletin No. 70 (Exhibit No. 5) on which the assignment or award is shown and desires to point out that **no application in accordance with the above rule was received from Mary I. Sherk for the position advertised by Bulletin No. 68, therefore, in accordance with the rule, the position was awarded to G. H. Levan, the senior qualified employee who had submitted application for same.**

Inasmuch as Mary I. Sherk failed to submit application for the position of telegrapher on the second trick at Rutherford, Penna. advertised by Bulletin No. 68, dated December 9, 1938, the Carrier holds the claim as submitted to the Board is not valid and is without merit or justification and the Carrier requests the Board to so find and deny the claim in its entirety.

OPINION OF BOARD: On December 9, 1938, Bulletin No. 68, advertising telegrapher's position at Rutherford, Pa., was published. Mary I. Sherk, a furloughed employe, claims that she submitted a written application for the position on Dec. 12, 1938. The Carrier denies that Miss Sherk made written application for the position. This claim and denial presents a question of fact which must be resolved on the evidence submitted. Nothing would be gained in setting forth the evidence which appears in the submissions by the parties. Sufficient to say is that after a careful consideration of the record it has been determined that Miss Sherk did submit her application for the position as claimed.

The Carrier complains about the delay in handling this claim. However, the record fails to show that the delay has been the cause of the Carrier's acting in any different manner than it would have acted had there been no delay. It also appears that the right of Miss Sherk to the position at Rutherford had considerable discussion with various officials before it assumed the status of a claim. We are not, therefore, inclined to hold, under the record, that any rights of Miss Sherk have been waived by the delay.

The Carrier makes no claim that Miss Sherk was not qualified for the position, and, being the senior employe making application for the position, she was entitled to the position under Rule 11 of the Agreement.

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 Mary I. Sherk should have been assigned to the position at Rutherford as advertised by Bulletin 68.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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