

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**BERRYMAN HENWOOD, TRUSTEE
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
DEBTOR**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Company, that D. P. Harrison, the senior, extra, qualified telegrapher on January 1, 1942, who was denied the right beginning January 1, 1942, to work extra on the position of manager-telegrapher in the two-man relay office at St. Louis, Missouri, in violation of Article 14 of the telegraphers' agreement, which position was made temporarily vacant by the illness of the regularly assigned incumbent, shall be paid the difference in wages between what he earned on another position and what he would have earned on the manager-telegrapher position January 1, 1942, to April 6, 1942, inclusive, had he been assigned to this position to which he was contractually entitled under Article 14 of said agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1934, as to rules and working conditions, and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

Extra telegrapher D. P. Harrison was an employe under said agreement on January 1, 1942.

Beginning January 1, 1942, the regularly assigned incumbent on the position of manager-telegrapher in the relay office at St. Louis, which position was covered by the telegraphers' agreement, was absent from duty on account of illness. On this date D. P. Harrison was the senior, available, qualified extra telegrapher.

Article 14 of the telegraphers' agreement provides:

"The senior extra employe shall have preference to extra work but will not be permitted to displace on positions where transfer is required unless same will continue five (5) days or more."

Although Telegrapher Harrison was the senior, extra, available, qualified telegrapher to perform work on the manager-telegrapher position beginning January 1, 1942, the regularly assigned second trick telegrapher in the St. Louis relay office was assigned to work extra on the manager-telegrapher position, and extra telegrapher was assigned to work extra on the regularly assigned second trick telegrapher position, a lower rated position.

Mr. Harrison had never performed any work in the St. Louis Relay Office, nor on the Northern Division upon which the St. Louis Relay Office is located. While his ability to perform relay telegraphing was not questioned, as stated above the duties of the Manager-Telegrapher at St. Louis required an experience which Mr. Harrison did not possess; and the Carrier pulled Telegrapher Crouch off his assigned position and used him to fill the position of the Manager-Telegrapher. Telegrapher Crouch had worked in the relay office at St. Louis more than 20 years, and had previously filled the position of the Manager-Telegrapher without complaint or claim being filed.

In letter September 15, 1942 the Employees requested that Telegrapher Harrison be given a test to determine his ability (Exhibit No. 5). The Carrier could not agree that a test conducted at that late date, approximately ten months after he began work in the relay office, would reflect his qualifications to have served as manager as of January 1, 1942, and declined to conduct such a test.

The Carrier agrees that Article 14 (quoted in Statement of Facts) requires extra men be used to perform extra work, and that regularly assigned men must not be used for relief work under ordinary circumstances. However, Article 16 (quoted in Statement of Facts) provides for the use of regularly assigned men for relief work under extraordinary circumstances when an extra telegrapher is not available or when the available extra telegrapher is not qualified to perform the work on a particular job.

As outlined above, the Carrier had good reason to consider that Telegrapher Harrison was not qualified to fill the position of manager-telegrapher in the St. Louis Relay Office during the period of this claim, and protected the work with an assigned telegrapher under the provisions of Article 16, placing Telegrapher Harrison on a job he was qualified to fill. There is no rule which requires that an extra telegrapher be paid the rate of a position which he is not qualified to fill, and the Carrier respectfully requests that the Employees' claim be denied.

OPINION OF BOARD: Upon the illness of the manager-telegrapher, whose regular daily assignment was from 6:00 A. M. to 2:00 P. M., Crouch, the second telegrapher, whose regular daily assignment was from 9:30 A. M. to 5:30 P. M., was changed to that shift, and Harrison, the senior extra telegrapher available, was used in Crouch's place.

• The claim is that Harrison was qualified for the manager-telegrapher's work, was therefore entitled to it under Article 14, and should be paid the difference between the pay of the two positions. The Carrier contends that Harrison was not qualified, that there was no qualified extra telegrapher available, that an emergency therefore arose under which it was entitled to use Crouch for the relief work under Article 16.

It is clear that whether Article 14 or Article 16 applies here is dependent upon the question of fact as to Harrison's qualification for the relief work.

The Carrier's reason for declining the claim, as shown in the General Superintendent's decision, is that Harrison was "not qualified to manage one of our most important relay offices for the reason that he was not familiar with the telegraph business of the various offices located at St. Louis, the connecting lines, telegraph circuits, and other routine work required of the manager at that office." The Carrier emphasizes the fact that most of Harrison's telegraph experience was on other than railroad work, but admits that there was no question of his qualification for the second telegrapher's position. Thus it is clear that the source of his telegraphic experience is immaterial. The Organization contends that the work of the manager-telegrapher and of the second telegrapher was substantially the same; that while during his regular hours the manager-telegrapher was technically in charge of the office, his supervisory or managerial duties were negligible and that for three

and one-half hours after the end of the manager-telegrapher's shift the second telegrapher was in full charge and necessarily handled all the work, telegraphic and otherwise.

The record shows that the mechanical work connected with the telegraphic equipment and maintenance of circuits is handled by the Western Union Telegraph Company, and does not constitute part of the duties of the manager-telegrapher. It shows also that the telegraph messages received for or sent by other carriers through this office were handled by the messenger and that new messengers are normally instructed in their duties by their predecessors. The only additional point relied upon by the Carrier is Harrison's lack of familiarity with the offices of the Carrier's various officials at St. Louis, messages to which are handled also by the messengers.

While in the first analysis the determination of the extra employe's "ability and qualifications" necessary to establish seniority rights under Article 18 is for the management to determine, it seems clear that Harrison was qualified for the position and was therefore entitled to it under Article 14. The claim must, therefore, be allowed.

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 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 the Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of January, 1944.