

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SACRAMENTO NORTHERN RAILWAY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Sacramento Northern Railway that in filling the position advertised in Telegraphers' Bulletin No. 1 dated Sacramento, California, May 2, 1938, the Carrier did not assign the senior qualified employe and claim is made that such senior qualified employe, who is A. E. Brandon, be so assigned and that he be compensated for the difference in rate of pay of the position worked by him since the date of assignment and the rate of pay of the position to which he was entitled to be assigned, until such time as proper assignment has been made.

EMPLOYES' STATEMENT OF FACTS: Telegraphers' Bulletin No. 1 issued at Sacramento, May 2, 1938, advertised the position of Drawbridge Tender-Leverman, first trick "M" Street Bridge, Sacramento.

Telegraphers' Bulletin No. 5 issued at Sacramento, May 23, 1938, assigned the position of Drawbridge Tender-Leverman, first trick, "M" Street Bridge, Sacramento, to R. M. Standley, who was not the senior qualified applicant for the position.

POSITION OF EMPLOYES: There is an agreement in effect between the parties to this dispute and a copy of that agreement is on file with this Board. These rules have both a general and specific application to this claim. Any rule that has a connection with, defines, explains or clarifies terms used herein, may hereafter be cited.

The claim is covered more specifically by Rules 17 and 22 (b), which are quoted for ready reference:

"RULE 17

Promotion, Vacancy and Assignment

(a) 'Telegraphers' will be regarded in line of promotion, advancement depending upon faithful discharge of duty and capacity for increased responsibility. Where these are sufficient, seniority will govern.

(b) When a vacancy occurs, or a new position is created, it will be bulletined to all telegraphers covered by this agreement within ten (10) days from date thereof and for a period of ten (10) days. Such bulletins will state rate of pay, assigned hours and whether or not free living quarters are furnished.

(c) Permanent appointment shall be made within twenty (20) days and appointees placed within thirty (30) days from date of bulletin. Name of appointee will be published in the next bulletin.

"STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
Sacramento (7)

Division of Highways
Public Works Building

III-Yol, Sac-6-C, Sac
'M' Street Bridge

June 20, 1944

Mr. H. A. Mitchell, President
Sacramento Northern Railway
526 Mission Street
San Francisco, 5, California

Dear Sir:

Reference is made to previous correspondence in connection with the continued employment of Mr. R. M. Standley as First Trick, Draw-bridge Tender-Leverman on the 'M' Street Bridge at Sacramento, California.

It is understood that our jurisdiction over employment matters applies solely to the satisfactoriness of the employe under the terms of the Agreement covering operation of this bridge.

To our knowledge, Mr. Standley has faithfully, fully and efficiently handled his assignment in conformance with the operating agreement. Since his work has been entirely satisfactory, we consider that the best interests of the State, as well as the Sacramento Northern Railway, would be served by Mr. Standley's retention in his present capacity.

Yours very truly,

/s/ G. T. McCoy
State Highway Engineer"

Copy of State Highway Engineer G. T. McCoy's above-mentioned letter of June 20, 1944 was furnished General Chairman Pritchett under date of June 22, 1944.

POSITION OF CARRIER: From the above facts and correspondence quoted in the "Statement of Facts," it can readily be seen that the Carrier complied with the provisions of the agreement involved, as well as with the wishes of the Department of Public Works of the State of California.

It is the position of the Carrier that the assignment of Mr. R. M. Standley to the position in question was in accordance with the provisions of our agreement with the organization. The position was bulletined in accordance with the provisions of such agreement and was assigned in accordance therewith, together with being assigned in a manner satisfactory to and as desired by the governing agency of the State of California. In fact if the claim was sustained it would be contrary to both the agreement and the wishes of the Department of Public Works of the State of California.

We, therefore, ask that the claim be denied since no violation of the agreement occurred.

OPINION OF BOARD: The claim in this case is by The Order of Railroad Telegraphers on the Sacramento Northern Railway that in filling the position advertised in Telegraphers' Bulletin No. 1, dated May 2, 1938, at Sacramento, California, the Carrier did not assign the senior qualified employe and it is the contention of the Employees that said senior qualified employe was A. E. Brandon; that he should be so assigned and that he be compensated for the difference in rate of pay of the position worked by him and the rate of pay of the position to which he was entitled to be assigned.

The Employees rely on Rules 17 and 22 (b) of the current Agreement. We quote these rules:

"RULE 17**Promotion, Vacancy and Assignment**

(a) 'Telegraphers' will be regarded in line of promotion, advancement depending upon faithful discharge of duty and capacity for increased responsibility. Where these are sufficient, seniority will govern.

(b) When a vacancy occurs, or a new position is created, it will be bulletined to all telegraphers covered by this agreement within ten (10) days. Such bulletins will state rate of pay, assigned hours and whether or not free living quarters are furnished.

(c) Permanent appointment shall be made within twenty (20) days and appointees placed within thirty (30) days from date of bulletin. Name of appointee will be published in the next bulletin.

(d) If transferred and found incapable, 'telegraphers' will revert to extra list, retaining seniority. Seniority will not be forfeited when promotion is declined.

(e) A 'telegrapher' making application for and being assigned to a bulletined position will not be eligible for the position vacated by him for a period of four (4) months unless reductions in force compel him to exercise his seniority. Applicants may cancel their bids for vacancies or new positions only before date of expiration of bulletins.

(f) A regular assigned 'telegrapher' may, with the approval of the Management, revert to the extra list; in such event his assigned position will be bulletined in accordance with Section (b) of this rule and he will remain thereon until relieved."

RULE 22**Discipline**

"(b) The Department of Public Works, State of California, by agreement, has jurisdiction over employees employed in the operation of the 'M' Street Bridge at Sacramento, California; therefore, rules of this agreement pertaining to discipline, dismissal, jurisdiction or representation shall not apply if the Department of Public Works elects to discipline or dismiss an employee working under the provisions of this agreement in the operation of said 'M' Street Bridge. Applicants for positions in the operation of the 'M' Street Bridge are subject to the approval of the Department of Public Works without regard to rules of this agreement."

The Carrier by bulletin directed attention to vacancy of a position of first trick Drawbridge Tender-Leverman at "M" Street, Sacramento, California. This bulletin directed the attention of bidders to the fact that the applicants were subject to the approval of the Department of Public Works.

The Carrier submitted the names of the five applicants for this position to the Department of Public Works of the State of California. The record shows that the applicants listing under Bulletin No. 1 and the numerical listing on their seniority list as well as their seniority dates were as follows:

J. Hooker	—Seniority date—6- 1-28
A. E. Brandon	—Seniority date—8-26-32
R. M. Standley	—Seniority date—1- 1-36
Carl E. Plock	—Seniority date—7- 6-36
Donald R. Hook	—Seniority date—8- 1-36

The Carrier submitted all five of these names but in its letter of submission it stated and we quote from the letter of May 11, 1938:

"It is my opinion that Mr. R. M. Standley is the most capable applicant for this position."

It is the contention of the Employees that Rule 17 applies in this case. With this we agree. The Agreement between this Carrier and its employees covering promotions is definitely set out in Rule 17. There is no question in this record but that J. Hooker was the oldest available man, that A. E. Brandon was next and R. M. Standley was third. Nowhere in this record is there any question raised by anyone but that all of these three men were capable and qualified to hold this position. The claim that was originally made here was made on behalf of Mr. Hooker and Mr. Brandon.

As we see it, under the Agreement here involved, the Carrier had the right to fill this vacancy subject only to the approval of the Department of Public Works in accordance with Rule 22 (b). If the Department of Public Works did not approve the individual recommended, then that individual, although he had seniority rights, could not be appointed to the position. But it was the duty of the Carrier to fill this position in compliance with its Agreement with the Employees.

The letter in which the Carrier submitted the names of the applicants to the Department of Public Works did in reality recommend one individual, to wit, Mr. Standley. This was in violation of the current Agreement because both Mr. Hooker and Mr. Brandon held seniority rights superior to Mr. Standley and under this record both were qualified to hold this position. The only right the Department of Public Works had was to approve or reject the appointment.

The Carrier violated the Agreement when it did not submit the name of the applicant who held seniority rights in compliance with Rule 17 since the record shows that he was qualified.

This claim was originally made jointly for Mr. Hooker and Mr. Brandon. Hooker continued to be the senior employee until November 11, 1942, at which time he resigned; up to the time of his resignation he was entitled to this position; when he resigned, Brandon became the senior man. Mr. Brandon is entitled to be compensated for the difference between what he received and the rate of pay of the position to which he was entitled from November 11, 1942, until such time as proper assignment is made.

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 Employees involved in this dispute are respectively carrier and employees 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 a violation of the current Agreement by the Carrier.

AWARD

Claim sustained from November 11, 1942 until such time as proper assignment is made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.