

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Delaware, Lackawanna and Western Railroad, that:

(1) Q. H. Ryder be placed as agent at Plymouth, Penn., in accordance with the displacement to that effect which he filed February 5, 1944, under the provisions of Rule 21 of the Telegraphers' Agreement; and

(2) Ryder be paid the difference between what he has earned since February 5, 1944, and what he would have earned had he been so placed promptly, and that he be paid the expense allowance and travel time incurred under Rule 15 of said agreement by reason of his enforced service on positions other than the Plymouth agency; and

(3) Any employees who have been adversely affected by reason of Agent Ryder placing himself elsewhere than at Plymouth under protest shall be made whole for any resultant loss in earnings or expenses incurred through being improperly displaced by Ryder.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement (wage scale) at pages 23 and 24 lists:

Duryea	Agent-Operator	72¢ per hour
Wyoming	"	78¢ "
Plymouth	"	\$205.20 per month
West Pittston	"	78¢ per hour
West Nanticoke	"	72½¢ "

NOTE: These rates increased by 19¢ per hour subsequent to the effective date of the current agreement.

Immediately prior to the date of the transaction which caused this dispute, J. F. Long, seniority date 1910, occupied Duryea agency; Q. H. Ryder, seniority date 1923, occupied the Wyoming agency, and D. W. Reese, seniority date 1937, occupied the Plymouth agency.

Effective February 5, 1944, the Duryea agency was discontinued. J. F. Long exercised his displacement right by displacing Q. H. Ryder at Wyoming. Ryder chose to displace D. W. Reese at Plymouth but was denied that right by the carrier.

OPINION OF BOARD: From February 1913 to November 1, 1937, Reese was accumulating seniority rights under a Clerks' Agreement, the terms of which are not before us. Effective December 1, 1939, the Plymouth Agency position along with others, was placed under Telegraphers' Agreement and was included in the printed Agreement effective May 1, 1940. Rule 16 (f) provides that seniority begins at the time employe starts work in the class in which he is regularly employed. Since Reese entered the service covered by Telegraphers' Agreement on November 1, 1937, his seniority under the above rule properly began on November 1, 1937. The seniority date of Ryder is 1923. It cannot with good reason be denied therefore that Ryder is senior in service to Reese.

Carrier concedes the competency of Ryder to fill the position he seeks to displace. Under Rule 21, incumbents of positions abolished have the right to any position covered by the schedule which they are competent to fill, providing incumbents thereof are junior in service to them. Because of the fact that the record is undisputed that Reese is junior in service to Ryder, and Ryder is competent to fill the position held by Reese, it would seem that Ryder has clearly brought himself within the provisions of Rule 21.

But Carrier relies upon a claimed oral agreement with the Committee, made simultaneously with the execution of printed Agreement of May 1, 1940, and subsequently reaffirmed, that incumbents of agency positions reclassified to schedule positions shall not be displaced from such positions by a senior employe.

Several affidavits of officers and employes were submitted by Carrier to substantiate the alleged oral agreement. In affidavit of Moffatt, General Superintendent until December 1, 1941, it is stated that conferences took place April 16, 17 and 30, 1940, when an oral agreement was made, and later reaffirmed, October 3, 1940. The affidavits are denied by Organization and a sharply controverted issue of fact is presented as to whether or not such oral agreement was made. But we find it unnecessary to determine that fact question.

Assuming for the purpose of the discussion that the oral agreement was made, it cannot be used to modify or contradict the plain obligations of the printed Contract of May 1, 1940. It seems to be conceded that the printed Agreement dated May 1, 1940, was signed July 5, 1940. If, as claimed by the Carrier, it was orally agreed in the conferences held April 16, 17 and 30, 1940, to exclude Reese, incumbent of agency position at Plymouth, from displacement by a senior employe so long as he remained on the Plymouth Agency, such oral agreement should have been incorporated in the written contract. The record discloses an attempt was made to secure Organization's signature on a written agreement modifying the Contract of May 1, 1940, but the attempt failed. The attempt continued after the written Contract was executed, but without success. Under such circumstances Carrier cannot now be heard to say that such oral agreement supersedes the provisions of the written Contract.

The danger of permitting oral arrangements, made before or contemporaneously with the execution of written contracts, to modify or contradict the terms of the written Agreement is readily apparent. If such an oral agreement could be used as a defense against Rule 21, a similar defense could also be used against every other rule in the written Contract. It is obvious the Contract would lose its efficacy and usefulness in the settlement of disputes if such a procedure were permitted. When parties enter into written contracts, they are presumed to evidence in writing the results of their oral discussions. It is an elementary rule of law that such written contracts cannot be modified or contradicted by contemporaneous oral agreements. Aside from the legal aspect involved, it would be very dangerous practice in labor disputes to permit oral agreements to affect the terms of a written contract. The very purpose of the writing is to bind parties to certain rules and prevent claims of other understandings. It is protection both to the Carrier and

Organization that the printed Agreement of May 1, 1940 can be changed or modified only by further negotiation, and if any changes are agreed upon, that such agreement be reduced to writing and the modified agreement executed by both parties. See 9526, First Division.

With reference to travel time and expense allowance of \$1.00 per day, Carrier claims because employee was not assigned at Plymouth he was not entitled to this allowance. This argument falls because of our holding that employee was entitled to the assignment at Plymouth. In the application of the rule it must be considered that the Plymouth assignment was made, because under the rule it should have been made.

Carrier also complains of the indefiniteness of proof as to any other employees adversely affected. It is true the record does not show what if any other employees were affected, but it should not be difficult to ascertain from the records what other employees if any are entitled to be compensated for loss by virtue of Ryder's placement elsewhere than at Plymouth.

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 by right of seniority Ryder is entitled to the Plymouth Agency as of February 9, 1944;

That Ryder is entitled to be reimbursed for travel time and expense allowance of \$1.00 per day under Rule 15 because of refusal by Carrier to permit him to exercise seniority; and

That other employees, if any, affected by improper application of the rules are entitled to reimbursement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1945.