

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 on The Delaware, Lackawanna & Western Railroad Company that:

(1) The Carrier violated Rule 16-(f) of the Telegraphers' Agreement when, on June 5, 1944, it unilaterally assigned a seniority date of May 1914 to Roy P. Loftus upon restoring him to service as a telegrapher after dismissing him from the service for cause on January 17, 1944, while regularly employed as a train dispatcher, and

(2) All employes under the Telegraphers' Agreement adversely affected by this improper act of the Carrier, who have thereby been denied positions to which their seniority entitled them, shall be compensated for the difference in wage loss suffered and paid for all expenses entitled under the rules of the said agreement, while thus deprived of their rightful positions.

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

Roy P. Loftus entered service of the Delaware, Lackawanna & Western R. R. Co. during May 1914, according to official seniority rosters as compiled and revised each year. Later, he was advanced to train dispatching service, the date being unknown to the Organization.

On two or more occasions prior to January 17, 1944, Mr. Loftus was dismissed from service account violation of Operating Rule "G"; on each occasion he was reinstated to service in the class occupied at the time of dismissal.

January 17, 1944, while on duty as a train dispatcher, Mr. Loftus was removed from the train dispatcher position and again dismissed from service account violation of Rule "G". He remained out of service until June 5, 1944, on which date he was "reinstated to the service of the Lackawanna Railroad as operator". (Carrier's exact language.) On June 3, 1944, prior to said reinstatement, Mr. Loftus applied for a telegraph position then on bulletin—he was assigned to that position and later to another telegraph position in preference to employes with seniority dates ante-dating June 5, 1944.

Board will not sanction a construction of the agreement never intended and which would be at war with the best interests of both the Management and men.

The dispute has been discussed with the Organization General Chairman on the Property but no evidence has been furnished to the Carrier that any employe or employes have authorized the claim.

Wherefore, the Carrier respectfully submits that the claim should be denied.

OPINION OF THE BOARD: Brotherhood complains in this case of the action of Carrier in assigning a seniority date of May, 1914, under the Telegraphers Agreement, to Roy P. Loftus, after he was dismissed from service as a Dispatcher, and subsequently restored to such service.

Brotherhood does not object to the restoration of Loftus to a position of Dispatcher with his full rights as such, nor does it object to Loftus having a date on the Telegraphers roster as of June 5, 1944, the date of his restoration to service.

Carrier relies upon Rule 16 (e) which reads:

"Employes dismissed from the service of the railroad and re-employed within one year, shall not lose their seniority. Those who leave the service voluntarily and are re-employed, will rank as new men."

We do not deem it necessary to decide in this case whether under Rule 16 (e) Carrier was justified in giving Loftus a seniority date of May, 1914, on the Telegraphers roster. Because of what happened on the property Carrier is not now in a position to urge this contention. After certain discussion had taken place regarding this claim, Carrier's Vice President wrote the General Chairman under date of December 22, 1944 as follows:

"Answering yours of December 9th, Case No. 219, regarding seniority date of R. P. Loftus on the telegraphers' roster.

"On further consideration, I have instructed that his date on the Telegraphers' roster shall be June 5, 1944, the date of his restoration to the service, and Superintendent Diegtel has been directed to discuss with you the matter of filling the vacancy which resulted in your protest."

True, the Carrier subsequently attempted to retract this letter, by its letter of January 12, 1945 as follows:

"Since my letter of December 22, 1944, to you, I have received **more complete information** in connection with the above case.

"In the light thereof, and in view of the applicable rules thereto, justice requires that my letter of December 22, 1944, be and it is hereby voided and overruled."

What constituted the "more complete information" suggested in this letter of January 12, 1945, does not appear in the record. Under the circumstances disclosed in the record, we do not believe Carrier was justified in retracting its letter of December 22, in which it stated that it had instructed that the date of the seniority of Loftus on the Telegraphers' roster should be June 5, 1944.

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 Carrier violated the Agreement.

AWARD

Claim sustained for Stanley R. Knickerbocker and Anthony M. Foy.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST; H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1946.