

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 Delaware, Lackawanna & Western Railroad, that R. C. Van Syckle, who has been assigned to the position of assistant agent at Millburn, New Jersey, continuously since January 1, 1931, and who was so assigned when this position was negotiated into the telegraphers' agreement effective May 1, 1940, is entitled under the provisions of rule 16-(f) of the telegrapher's agreement to a seniority date on the telegraphers' seniority roster for the district on which employed, and shall be assigned a seniority date of January 1, 1931, the date he started to work on this position.

EMPLOYES' 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.

January 1, 1931, R. C. Van Syckle, with seniority in another class or craft, began the occupancy of a position at Millburn, New Jersey, which had been arbitrarily substituted by the Carrier for an agency position thereat. Mr. Van Syckle has remained on that position continuously except on two occasions for short durations he was required by the Carrier to temporarily act as agent at Orange, N. J., a position within the telegraphers' agreement.

The duties assigned to the position squared with agency duties covered by the scope rule of the telegraphers' agreement. During conference between the parties November 9, 1939, it was agreed the so-called clerical position at Millburn, because of the duties required, would be reclassified to assistant agent and incorporated in the telegraphers' agreement. The next revised and printed telegraphers' agreement dated May 1, 1940 lists at page 15 "Millburn—Assistant Agent—Rate per Day \$4.71-¼."

The Carrier has declined to include the name of R. C. Van Syckle on the telegraphers' seniority roster for the district on which Millburn and Orange are located and on which Mr. Van Syckle has been continuously employed.

POSITION OF EMPLOYES: As indicated in the Employees' Statement of Facts, perhaps too briefly, the record reflect that in the beginning an agency position subject to the provisions of the telegraphers' agreement was in existence and operative at Millburn. On or about January 1, 1931,

The Carrier has shown that in filling Assistant Agents' positions at Clifton, Horseheads and Perkinsville, which were held by clerks prior to the reclassification in 1939, the incumbents were permitted to continue in these positions, and were not required to be listed on the Telegraphers' Roster. However, when an incumbent did vacate the position it was advertised to employees covered by the Telegraphers' Agreement, indicating that for a period of over six years the employees recognized the agreement cited in the Carrier's statement of facts.

The Employees in their statement of claim imply that R. C. Van Syckle has been assigned to the position of Assistant Agent at Millburn continuously since January 1, 1931.

The statement is incredible in view of the fact that the position of Assistant Agent at Millburn was established December 1, 1939. Furthermore, the service record of R. C. Van Syckle shows that on January 1, 1931, he was employed as Acting Chief Clerk and Cashier at Dover, N. J.

Summing up the situation it will be seen that—

1. Van Syckle has rights on clerks roster as of April 24, 1923—
2. Obviously, he can not or should not hold seniority rights under two separate agreements—
3. He has never established seniority rights under the ORT agreement—
4. To comply with the request and place him on the Telegraphers' Roster would have the effect of—
 - (a) Eliminating seniority rights of more than 23 years—
 - (b) Creating an injustice to 73 other employees ahead of whom his name would be shown.

For reasons outlined above, it is respectfully submitted that the claim should be denied.

OPINION OF BOARD: Claimant has occupied a position at Millburn, New Jersey, since July 2, 1932. Until November 9, 1939, it was considered a clerk's position and Claimant was shown on the Clerk's seniority roster. On that date, it was agreed that the duties of the position were those of an assistant agent and within the scope of the telegraphers' agreement. The Organization asks that Claimant be given seniority as a telegrapher as of July 2, 1932.

It is not questioned that Claimant was accumulating seniority rights under a clerk's agreement from April 23, 1923 to November 9, 1939. On that date, the position he occupied was negotiated within the telegraphers' agreement. He then became subject to the telegraphers' agreement, including Rule 16-(f) thereof, providing that seniority begins at the time employee starts work in the class in which he is regularly employed. Claimant first occupied what is now a telegrapher's position on July 2, 1932. The case is identical in principle and similar in its facts with that involved in Award 2840. The reasoning of that decision, to which we adhere, requires an affirmative award. Claimant is entitled to a seniority date of July 2, 1932.

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 Employee involved in this dispute are respectively carrier and employee 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 agreement was violated as alleged.

AWARD

Claimant awarded seniority date of July 2, 1932.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.