

Award No. 3820

Docket No. TE-3751

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana, that J. E. Johnson regularly assigned agent at Reaves, La., shall be compensated for the difference between what he earned at the Reaves agency and what he would have earned had he been used on the temporary vacancy on the star (*) agency position at DeQuincy, La., September 4, 1945, through April 30, 1946, under the provisions of Rule 36-(b) of the Telegraphers' Agreement, for which he was available and should have been used.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective October 15, 1940, is on file with The National Railroad Adjustment Board.

Claimant J. E. Johnson was regularly assigned to a small agency, Reaves, La., located 24.3 miles East of DeQuincy on a concrete highway running between DeQuincy and Baton Rouge, La., and could have been relieved to protect the DeQuincy Star Agency. He was not asked to work the position on the dates involved although he had been used on three different occasions previously. An employe, not covered by the Telegraphers' Agreement was used in violation of rule 36-(b).

POSITION OF EMPLOYES: On February 13, 1941, J. E. Johnson was working extra and was used from that date until April 3, 1941, to relieve agent DeQuincy, La.

On October 9, 1943, J. E. Johnson was regularly assigned to the Reaves, La., Agency and was used to work a temporary vacancy at DeQuincy, La., Star Agency until December 16, 1944, and was paid expenses away from regularly assigned position as provided in rule 14 which provides that regularly assigned employes may be used in emergency to perform extra work.

On another occasion Johnson was used at Port Barre, La., to relieve the agent at that point in emergency and was paid expenses.

On September 2nd, 1945, the General Chairman received protest account an employe not covered by the Telegraphers Agreement was to be checked in as agent at DeQuincy, La., and immediately wired the Assistant General Manager Mr. L. A. Gregory and Division Superintendent A. F. Judd, Western Union, as follows:

In conclusion, the Carrier desires to direct the attention of the Board to the following facts:

1. The position in question was a regular position on which a temporary vacancy existed.
2. The vacancy on this position was advertised to all telegraphers on two different occasions in accordance with the governing rules of the Telegraphers' Agreement.
3. The claimant had an opportunity, but declined to make application for the position on either occasion, thereby indicating that he did not want it.
4. No other employes coming within the scope of the Telegraphers' Agreement desired the position.
5. DeQuincy, being an important station, it was necessary that the position of Agent at that point be filled as quickly as possible and in the absence of any employe coming within the scope of the Agreement indicating a desire for the position, the Carrier then offered it to Mr. Gimnick who was, by experience, fully qualified for the position.
6. Assuming, but denying that there was a violation of the Telegraphers' Agreement under the circumstances existing in this case, as alleged by the Employes, the responsibility for such violation rests squarely and solely upon the shoulders of the Employes, not the Carrier. The Carrier either fulfilled or endeavored to fulfill its contractual obligations. The same cannot be said for the Employes.

In the light of the foregoing, it is the position of the Carrier that the Employes' contention, which is wholly without justification, be dismissed and the accompanying claim accordingly declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, the regularly assigned agent at Reaves, La., seeks compensation for the difference between what he earned at Reaves and what he would have earned had he been used on the temporary vacancy on the (*) agency position at DeQuincy, La., from September 4, 1945, when latter position given to a Clerk, and April 30, 1946, when the position was assigned to Claimant.

In June and again in July, 1945, the Carrier bulletined the position. The first time there was only one bidder. This one bidder later withdrew his bid. There was no bid in response to the second bulletin.

Rule 36 (b) of the applicable Agreement expressly provides that star (*) agency positions are to be filled jointly by the Operating and Traffic Department "from the ranks of employes covered by this Agreement in the employ of the Carrier." The Agreement contains no exception to this requirement that such positions be filled from the ranks of the employes covered by the Telegraphers' Agreement.

On September 3, 1945, the General Chairman sent a wire to the Carrier protesting the using of other than a telegrapher and in said wire stated, "Plenty of telegraphers available at less important stations and expect pay including express commission." The next day Superintendent Judd answered the General Chairman saying:

"This position was placed under bulletin and there were no bidders from the telegraphers' seniority roster. We have no qualified agents on the operators extra board that could work this agency and it was necessary to make some arrangements to fill the vacancy temporarily until such time as an operator who is qualified to handle agency work is available."

On the same date, September 4, 1945, the position was filled with a Clerk.

The Carrier relies on the fact that its attempt to fill the position by two bulletins was unsuccessful. It takes the position that there was no such emergency as required it to fill the position by assigning a regularly assigned employe under the provisions of Rule 14.

We find no justification in the Agreement for the appointment of a person outside of the Agreement under the facts of this case.

There were qualified Telegraphers, including applicant, who could have been assigned to this temporary vacancy. The Claimant had worked this position on previous occasions and on April 30, 1946, was regularly assigned to the position.

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 Employe 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 Agreement was violated by the Carrier as claimed.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1948.

DISSENT TO AWARD 3820, DOCKET TE-3751

The interpretation placed on Rule 36(b), under the facts of this case, is clearly in error and productive of a situation that can but result in chaos. The Carrier more than fulfilled its obligation under the rule when it twice bulletined the vacancy and the claimant declined to make application therefor. The Opinion states the claimant was qualified and could have been assigned to the position in face of the claimant having twice said in effect that he did not want the position.

Nothing in the Agreement required claimant to apply for the position when bulletined and to have forced him to give up his regular assigned position and take the one in question, under the facts of this case, could only have resulted in violation of the Agreement and complete chaos if carried to its ultimate end. No meaning of words contained in Rule 36(b) can be construed to require such action. When the claimant by declining to apply for the position when twice bulletined and in effect telling the Carrier he did not want it, the Carrier was under no further obligation to him, and its further action in filling the position did not contravene the provisions of Rule 36(b).

/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. P. Dugan
/s/ R. F. Ray
/s/ C. C. Cook