

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that:

- (a) S. N. Gentile shall be allowed \$51.84 which represents the difference between what he would have earned had he not been improperly displaced from his regular position (relief position No. 10) by one L. J. Sadoski and what he did earn at Bethayres, and
- (b) Miss Ella C. Brennan shall be allowed \$373.31 which represents the difference between what she would have earned had she not been improperly displaced from her regular position (Bethayres) by one S. N. Gentile and what she did earn occupying the extra list.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of April 1, 1946, by and between the parties is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

On September 23, 1946, L. J. Sadoski, seniority date of January 20, 1940, following a force reduction was displaced, in accordance with Article 27 (a) of the Telegraphers' Agreement, from his regular assignment of Agent-telegrapher at Roslyn by J. A. Dwyer, seniority date of May 7, 1911. Mr. Sadoski in turn elected to displace L. Eidson, seniority date May 13, 1940, who occupied the ticket agent position at Wayne Junction. The Carrier disallowed this displacement at that time. Mr. Sadoski under protest then elected to displace S. N. Gentile, seniority date June 24, 1943, who regularly occupied Relief Position No. 10. Mr. Gentile in turn elected to displace Ella C. Brennan, seniority date July 9, 1943, who occupied a telegrapher-clerk position at Bethayres. Miss Brennan reverted to the extra list.

The Organization insisted that Mr. Sadoski be permitted to displace Mr. Eidson, ticket agent at Wayne Junction, in accordance with his seniority rating and the provisions of Article 27 (a) of the Telegraphers' Agreement. Mr. Sadoski was finally placed on the positions at Wayne Junction December 23, 1946; as a result of which Mr. Gentile returned to his former position (Relief Position No. 10) and Miss Brennan returned to her former position (Telegrapher-Clerk at Bethayres.)

From September 23, 1946 to and including December 22, 1946, Mr. Gentile earned at Bethayres \$51.84 less than he would have earned on Relief Position No. 10, and Miss Brennan earned on the extra list \$373.31 less than she would have earned at Bethayres, for which the Organization submitted claim and the Carrier denied same.

crying and saying I cannot work this job. Naturally Western Union in Philadelphia cannot tolerate these long delays. This is no reflection on the young lady, but she is not at all qualified for a heavy job like this. I suggest in order to properly handle this traffic you send me a more experienced person as long as the regular man is off. Thanks.

W. L. Keller."

The records show that between September 23 and December 22, 1946, when Miss Brennan was assigned to the extra list, she performed service as follows:

Telegrapher Clerk	Doylestown	September 23 and 24
Agent Telegrapher	Elkins Park	October 7 to 21
Telegrapher Clerk	Oak Lane	November 15, 16 and 17
"	Ambler	November 28
"	Newtown	December 1 to 17

That Miss Brennan was given such extra work at stations for which she was qualified is evidenced by her letter of April 12, 1947 to Division Operator, which is quoted as follows:

"Elkins Park,
April 12, 1947.

Mr. J. P. Reddy,
Division Operator:

In reference to time lost from being displaced at Bethayres from September to December 1946, I realize you done all you possibly could to give me as much work at stations where I could qualify.

Respectfully,
Ella C. Brennan."

In summarizing and under the facts and circumstances set forth in the foregoing, the Carrier maintains the claim as submitted should be denied for the following reasons:

- 1.—That positions identified in the agreement by "***" are filled by agreement between the Management and the Organization and claims are not justified up to the time it is decided the applicant or claimant is acceptable to both parties. In this case it was agreed and Mr. Sadoski was assigned to position at Wayne Junction on December 23, 1946, consequently claims in behalf of the claimants between September 23 and December 22, 1946, should not be considered.
- 2.—That the settlement made and agreed to on December 17, 1946 between the Carrier and General Chairman of the Telegraphers disposed of the entire case, including claims of Mr. Gentile and Miss Brennan.
- 3.—That claimant, Miss Ella C. Brennan, was given such extra work as she was qualified to perform, which she admits, therefore, claim in her behalf is not warranted and should be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: The questions presented in the claim require an examination of several Agreements, the application of which is the basis of the controversy.

Petitioner contends that employe L. J. Sadoski improperly displaced claimant S. N. Gentile, (a) of the claim, who in turn displaced claimant Ella C. Brennan, (b) of claim. The parties are in agreement that Sadoski was displaced on September 23, 1946 and in turn elected to displace junior employe L. Eidson, two star (**) position at Wayne Junction.

The Carrier denied this displacement. Sadoski then displaced claimant Gentile, who was his junior, and who in turn displaced Brennan, his junior.

Brennan going to the extra list. The Organization took the position that there was no rule preventing the displacement on these positions by senior qualified employees who were displaced.

Article 27 (a) is cited and is as follows:

"(a) In case of reduction of force or when a position is abolished, the employee affected, if qualified, may displace any junior employee occupying a permanent position on the seniority district on which employed or take his place on the extra list, providing claim is made in writing to the proper officer of the Company, copy to the Local Chairman, within five days of the date affected. A displaced employee will have the same rights. This paragraph is not applicable to Relay Division."

The Organization contends that if it had been the desire of the Carrier to remove two star (**) positions from displacement, reservation should have been made to that effect in Article 27 (a); that not having done so, the Carrier cannot make such reservation and exception by interpretation unless it is agreed to by the Organization. They contend that, in conference, the Carrier agreed to permit displacement by Sadoski, thus changing its position that such positions were not displaceable; that the Carrier had nothing to lose by allowing displacement, as the rule provides the one attempting to displace must be qualified. They assert that the Carrier on the claim of Brennan states that she was not qualified for all positions, but does not state that she was not qualified for the position at Bethayres; that had she not wrongfully been displaced, she could have been at that station the entire period and earned what is shown in the record. They contend that the Carrier bases its defense on the proposition that if vacancies (as applied to two star (**) positions) can only be filled by agreement, displacements should be treated similarly, citing the legend on page 40 of the Agreement; that Article 27 (a) provides for displacements and the legend merely takes care of filling vacancies and there is no prohibition against displacements, and that no vacancy existed.

The Carrier's position is that the parties by certain Agreements provided that displacement in the exercise of seniority rights could not be made by employees on positions variously marked in the Agreements: these included the position at Wayne Junction, marked with two stars (**). They contend that subsequent Agreements involved Wayne Junction and Wissahickon; that is, "The Memorandum of Agreement, effective December 1, 1946" is controlling; that the latest "Memorandum of Agreement", effective December 1, 1946, requires denial of the claim; that the current schedule Agreement, effective April 1, 1946, Article 27 (a), as modified by the note relating to two star (**) positions, page 38 of that Agreement, reads:

"**The monthly rate comprehends 243 hours per month. Article 7 (Overtime and Article 8 (Calls) are applicable for work performed beyond 243 hours per month. Vacancies on such positions shall be bulletined and filled by agreement between the Management and Local Chairman."

The Carrier contends it could not entertain displacement claims on the basis of Ticket Agent at North Broad Street and Wayne Junction as they were designated as two star (**) positions, the rules providing that vacancies on such positions could only be filled by agreement between Management and the Local Chairman and, after being so filled, no displacements should be permitted; that after conference as provided, it was agreed that Sadoski be placed in the position of Ticket Agent at Wayne Junction. An exchange of letters is set out in the record, confirming the arrangement whereby Sadoski was placed in the position at Wayne Junction, and he was so placed on December 23, 1946, without compensation adjustment; that this arrangement closed the entire matter and disposed of any such claims as herein made; that later Agreement of December 1, 1946, Item 2, provided that positions identified by "***" would be subject to displacement in the exercise of seniority but only in the same manner as agreed to in the filling of vacancies, that is, by agreement between Management and the Local Chairman.

Considering the record in its entirety and in view of the adjustment made, it would seem that the Carrier did not violate the Agreements made upon which the claim is based. There is merit in the contention of the Organization on the proposition that is is questionable if displacements should be treated as vacancies and in the ordinary case, the Referee is of the opinion that the ruling would be that they cannot be so treated; however, in the instant case, an unusual factor enters into the pictures, i. e., the Memorandum Agreement relative to the adjustment on two star (**) positions that the same will be made by agreement as between the Carrier and Local Chairman. The entire situation presented is out of the ordinary and hence the ruling that under the unusual conditions prevailing in the case, the claims are denied.

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 the Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of November, 1948.