

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad:

(1) That the Carrier erroneously assigned a junior applicant to the position of Agent at Teutopolis, Ill., on Bulletin No. 2 of June 18, 1947; and

(2) That A. J. Klautsch, a substitute agent and senior applicant for the position, shall be awarded this position and placed on the agent's roster as of July 1, 1947; that his subsequent bids for vacancies shall be recognized; and that he shall be paid his loss of earnings resulting from this error.

EMPLOYEE'S STATEMENT OF FACT: A. J. Klautsch has been in continuous service since July 15, 1917, and has been the incumbent of clerical position F-125-F at St. Elmo, Ill., since May 14, 1945.

Under date of January 16, 1946, Mr. Klautsch made application to be placed on the Agent's substitute list, as provided by Article V, Section I(c), Part I, of the Telegrapher's Agreement. Instead of complying with his request, his superior officer attempted to discourage him from going on this substitute Agent, list, by injecting conditions of acceptance not comprehended by the Agreement.

Mr. Klautsch having properly made application to be placed on the substitute Agent list considered that his name had been so placed, and that he was the senior employe on the list, and in event an agency position was advertised and no Agent made application for it, the position would be offered him as provided by the Telegraphers' Agreement, Part I.

On June 18, 1947, agency station at Teutopolis, Ill. was advertised as being vacant. No agent on the roster bid for the position, and as provided by the Agreement, Part I, the vacancy must be filled from the Agent substitute list. An employe on that list, junior to A. J. Klautsch was assigned.

POSITION OF EMPLOYEES: An Agreement is in effect between the Parties, Rules and Rates of Pay effective as of May 16, 1943. This Agreement is divided into two Parts, Part I of which covers the claim in this case.

The following Articles of Agreement are invoked in the instant case as sustaining the claim of the Committee:

ARTICLE V, SECTION I. Part I.

(a) A list of persons to be known as substitute Agents shall be maintained in each seniority district. The number of persons on such list shall be consistent with the requirements of the service.

It is respectfully submitted that the Agreement relied upon by the Claimant in this case does not support his claim and the claim should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that the Claimant failed to take proper action to have his name placed on the list of Substitute Agents, and further, there was no requirement that the Claimant be placed on the Substitute Agent's list. Since his name was not placed on the list, there was no requirement that he be considered for the position of Agent at Teutopolis, Illinois, and he is not entitled to the compensation which he claims.

It is, therefore, respectfully submitted that the claim is without foundation in the Agreement under which it is being progressed and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 16, 1946, Claimant, who was a clerical employe of more than thirty years' continuous service with Carrier, wrote the Supervising Agent of his division declaring his wish to be placed on the substitute agent's list and giving the record of his employment and family status. Three days later the Supervising Agent answered. The answering letter indicated, as the Agent's statement in the record discloses, that they had conferred on the subject other than by the letters shown, and it read in pertinent part as follows:

"I will be glad to submit your name for approval to be placed on the substitute Agent's list; however, it must be understood that when a vacancy occurs and no one bids on a position, we can assign to the vacancy a Substitute Agent, regardless of location.

"I hesitate at the moment to submit your name because of your desire to locate in the vicinity of Altamont, which is not always possible.

"If you still desire to become a Substitute Agent, in view of the facts stated above, advise and I will proceed with the recommendation."

Claimant made no reply to this letter nor did he further contact the Supervising Agent or any other representative of the Carrier about the matter, and his name was not submitted for placement on the list. Some seventeen months later, after three vacancies had been bulletined and filled from the Substitute Agent's list, Claimant made application for a fourth position and it was assigned to a junior employe. He protested the assignment and this claim was thereupon filed in his behalf.

The pertinent rules are from Part I of the Agreement. Article II, Sec. 13(b) and Article V, Sec. 1(a), (b), (c) (d) all of which are set out in the submissions.

There is no evidence that Claimant had knowledge of the bulletining and filling of the three positions before the one for which he applied. However, he did know: 1) that he could not bid in a position as Agent but could get such a position only by having it awarded to him as the senior qualified substitute agent appearing on the list; (2) that placement on the list was not merely a matter of form or of application or of seniority alone; but must depend as well on the judgment and discretion of the proper representative of the Carrier as to his ability, fitness and qualification for further promotion; (3) that the Supervising Agent to whom he made his application for consideration for placement on the list was not the person whose judgment would determine his placement; (4) that his application would not be sent to the proper official for consideration until he replied to the letter from the Supervising Agent.

With knowledge of these facts, Claimant obviously knew at all times that his name was not on the Substitute Agent's list and that he could not be given a regular assignment as agent. If the Supervising Agent was wrong in interpreting the rule to require acceptance of any offered position, Claimant could have ignored that matter in a reply to his letter. That letter, in prompt response to Claimant's request for consideration on the list, set up no bar, no hindrance and no substantial delay to such consideration. Even if the letter were ill advised or showed hostility as contended, courtesy as well as self interest still required a reply. Absent such reply Claimant has no basis in reason for complaint.

It is urged that the Employee to whom the position was assigned was not qualified, but since Claimant was not qualified that matter need not be determined.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.