

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD CO.**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that:

(1) the Carrier violated the provisions of the Telegraphers' Agreement when and because of Bulletin No. S-11 of June 8, 1949, it assigned A. R. Carpenter, who, on that date was under promotion to a train dispatcher, instead of Paul Rushin, to the second trick telegrapher position at Scranton Yard Office;

(2) in consequence of said violation, Paul Rushin shall now be assigned to said position as of June 8, 1949, and be paid under the provisions of Article 15 of the Agreement each day he has been improperly held off of said position, June 8, 1949, until he reaches the assignment.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, bearing effective date November 1, 1947, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

A vacancy was created in the second trick operator position, Scranton, Pa., Yard Office, when the regular incumbent, W. G. Dougher, in the exercise of seniority, was assigned to the first trick position in the same office on May 13, 1949. Under the provision of Article 16(c-1) said vacancy on the second trick operator position was advertised by the Carrier on its Bulletin S-9, May 26, 1949; the applicants being A. R. Carpenter and Paul Rushin—Carpenter was senior to Rushin. The Carrier arbitrarily assigned Carpenter to the vacancy on Bulletin S-11, June 8, 1949 as the senior applicant. The Organization protested this assignment, contending that Rushin should have been assigned, because, under the rules of the Agreement, Carpenter was not eligible, having previously accepted promotion to dispatchers' work, and was still working under promotion at the time. While Carpenter was allegedly holding the position under the assignment on Bulletin S-11 the Carrier again advertised the position for permanent assignment on Bulletin S-42, November 10, 1949, and John F. Finan was assigned on the subsequent Bulletin S-46, of November 25, 1949.

The Organization renewed its protest and lodged claim contending that Rushin should have been assigned to the vacancy advertised by Bulletin S-9 of May 26, 1949, therefore, the assignment of Carpenter, the subsequent

The principle in this case is similar to that in Docket No. TE-5316 now before this Division.

The claim is without merit, is not supported by rule or practice, and it should be denied. On the contrary, the practice under the present rules and the corresponding rules of past agreements is to encourage promotion and the qualifying for promotion. Where the personal whim of the General Chairman seeks to set at naught these salutary benefits to employees by a contention obviously alien to the best interests of the men covered by the agreement, this Board, we submit, will not be a party to such a scheme.

The Railway Labor Act imposes upon the general chairman the duty of representing the employees "without hostile discrimination, fairly, impartially and in good faith. (*Steele v. L. & N.R.R.*, 323 U. S. at 204.) To deny them the full benefits of promotion or the opportunity to qualify for promotion by punitive loss of their positions, **which is the result which would flow from sustaining the whim of the general chairman in this case**, is neither just nor required by the agreement.

OPINION OF BOARD: This dispute arose out of the alleged improper assignment of an admittedly senior employee to a second trick operator's position. The Organization objected on the grounds said employee had previously accepted promotion as a dispatcher and "was under promotion" at the time he was declared assigned. Therefore, it is contended, he was not eligible to bid and be assigned to a position under the Telegraphers' Agreement until he physically returned to service thereunder and assumed the status of an extra employee as required, the Organization contends, by Article 16(d-2).

While it is true that the employee at one time was promoted to a permanently assigned dispatcher's position, the record shows that he had been bumped from said position. Subsequently and prior to the period here in question, this employee was awarded a third trick operator's assignment. Nearly a year later he was assigned the second trick operator's position at the same location. During this period of service as third and second trick operator, he performed occasional extra dispatcher's work.

While the record is not clear upon this point, it will be assumed in absence of question raised, that subject employee assumed the role of an extra on the Telegraphers' roster after his displacement as regular dispatcher in 1947 and that his succession to the third trick operator's position was in conformity with our expressed interpretation of Article 16(d-1) and (d-2), as is contained in Award No. 5377. Hence it can be said that he physically returned to service under the Telegraphers' Agreement a number of months before the controverted action was taken and Article 16(d-2) was complied with.

The fact that this employee accepted temporary assignments as an extra train dispatcher in the meantime, did not subject him to the operations of Article 16(d-1) and (d-2), for the reasons stated in Award No. 5377, which is controlling in this case.

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 there has been no violation of the Agreement between the parties in respect to the matters complained of here.

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AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of June, 1951.