

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

David R. Douglass, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**  
**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that,

1. the Carrier violated the provisions of the rules of the Telegraphers' current agreement when and because it refused to assign W. E. Martin, who was the senior qualified applicant to the position of Manager, "BD" General Telegraph Office, San Francisco, Calif., also by refusing to grant him a hearing in accordance with agreement provisions after same had been requested; and,

2. W. E. Martin shall now be placed on the position of Manager, "BD" General Telegraph Office, San Francisco, Calif., and,

3. be paid the difference in compensation between that earned by the Manager of "BD" General Telegraph Office and that paid the claimant on any other position he may have worked from March 1, 1950, until placed on the position of Manager, "BD" General Telegraph Office, San Francisco, Calif.

**EMPLOYES' STATEMENT OF FACTS:** 1. There is in evidence an agreement between the parties bearing an effective date of December 1, 1944, a copy of which is on file with this Board and is by reference made a part of this submission.

2. The Carrier maintains a General Telegraph Office in San Francisco, California, generally referred to as "BD" Office, with personnel consisting of Manager, Wire Chiefs, Mechanician-Assistant Wire Chief, Printer Supervisors, Printer Machine Operators and Telegrapher-Telephone Message Operator.

3. The position of Manager in "BD" Office is designated by a star (\*) in the wage schedule of the Agreement, which subjects it to the provisions of Rule 44 of the Agreement, with respect to filling a vacancy thereon.

4. On January 31, 1950, the incumbent of position of Manager in "BD" Office retired. The position was advertised on February 2, 1950 in accordance with the provisions of Rule 19 and Rule 44, with applications for said position to be accepted by the Superintendent of Telegraph up to and including February 13, 1950. The bulletin advertising the position of Manager, "BD" General Telegraph Office, is quoted below for ready reference.

is the best qualified employee having five (5) or more years seniority. Nowhere in the provisions of Rule 44 is there a clause, expressed or implied, reserving to petitioner the right to pass upon the carrier's selection, nor is there any clause, expressed or implied, granting the right of investigation to one who is not selected.

In this connection attention is called to a similar case on this property denying a claim in which employes covered by the Clerks' Agreement, who were not assigned to a position excepted from seniority Rules 27 and 28, had requested an investigation, the opinion of the Board, with Referee Carter, reading in part as follows:

"Rule 33(f) requires that in assigning new positions, preference will be given to employes within the scope of the roster where the new position was created. The letter agreement did not remove the applicability of this rule from the position of Stationmaster at Tucson. The letter agreement did, however, relieve the Carrier from giving effect to Rules 27 and 28. The effect of this was to free the position from any right to promotion based on seniority, fitness and ability. It likewise freed the position from the necessity of the Carrier to make the assignment on the basis of seniority, fitness and ability. The net result is that the Carrier was limited in making the assignment to an employe within the scope of the Agreement, with employes on Roster No. 3 having a preference to the position. It naturally follows that Claimants were not entitled to an investigation under Rule 50 to determine their fitness and ability for the position because after the elimination of Rule 28, fitness and ability as used in the Agreement was no longer a condition precedent to the assignment."

Carrier submits that it has proven that there is no basis for or merit to the instant claim, and that in advertising the position of Manager in "BD" General Telegraph Office and in selecting an employe from the seniority list, having five (5) or more years' seniority, which in its judgment was the best qualified employe for the position, carrier fully complied with the provisions of Rule 44 of the current agreement.

### CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit and therefore submits that it should be denied.

All data herein submitted have been presented to the duly authorized representatives of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim is that the Carrier failed to assign the claimant to the position of Manager, "BD" Office, San Francisco and also refused to grant him a hearing under the provisions of Rule 19 of the current Agreement.

On January 31, 1950, the incumbent of position of Manager in "BD" Office retired. This position was designated by a star in the Agreement. The position was advertised under the provisions of Rule 19 as referred to by Rule 44. The position was awarded to one J. E. Shiffer on February 24, 1950.

The claimant's seniority date was October 26, 1909. The seniority date of Shiffer was April 17, 1942. The claimant had occupied the position of Manager of this office temporarily and the record indicates that his fitness to fill the position on a permanent basis is not questioned.

Rule 44, which applies to star positions, is the rule to which we must look in order to determine if the facts, as disclosed by this record, should warrant a sustaining award.

The portions of Rule 44, which are here pertinent, are the ones providing for proper advertising of the position in accordance with the provisions of Rule 19 and the right of the proper officer of the Carrier to select "the best qualified employee (having five (5) or more years seniority) \* \* \*."

Under the terms of Rule 19 the claimant is not entitled to a hearing in this particular instance. Rule 19 applies to non-starred positions in section (a) of the Rule in which appear the words "Where ability is sufficient, seniority shall govern." That obviously does not apply to a star position which clearly sets out that the employee shall be "the best qualified employee" having 5 years or more seniority.

Section (b) 1 of Rule 19 provides for hearings for employees who consider themselves unjustly treated under this rule. We are of the opinion that this is in cases where the Carrier has questioned or denied the fitness of an applicant.

The fitness of this claimant has not been questioned nor denied by the Carrier. The selection was made on the basis of "the best qualified."

The decision of selecting the best qualified applicant is one for the Carrier to make and in absence of a showing that such decision was made in an arbitrary, discriminatory manner the decision should not be disturbed.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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

The Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.