

**Award No. 6176**

**Docket No. TE-6226**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Mortimer Stone, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**CHICAGO & EASTERN ILLINOIS RAILROAD CO.**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Chicago & Eastern Illinois Railroad; that

- (1) the Carrier violated the Agreement between the parties when on the 30th day of January 1950, it improperly interfered with exercise of seniority rights by A. L. Taylor, and by intimidation caused cancellation of proper bid for position of agent at Momence, Illinois, pursuant to bulletin dated January 16, 1950; and
- (2) that said A. L. Taylor now be assigned to the position of Agent at Momence, Illinois, and be paid for any momentary loss sustained by him as a result of the Carrier's violative action.

**EMPLOYEES' STATEMENT OF FACTS:** There is in full force and effect, an agreement dated May 1, 1945, between Carrier and Employees covering hours, rates of pay and conditions of employment.

This case involves interference by carrier in the exercise of seniority by A. L. Taylor, an employee covered by the Agreement.

On the 16th day of January, 1950, Carrier acting through proper officers advertised certain vacancies on Telegraphers' Seniority District 1 on its railroad. Among the vacancies shown was Agent, Momence, Illinois. Taylor, being on the seniority roster of District 1, entered his bid under date of January 19, 1950, for this agency.

Under the rules, bids for positions on this bulletin closed at 5:00 P. M. January 25, 1950. On January 26, 1950, in conformity with the rules, F. J. Wehling, Chief Dispatcher for Carrier, at Danville, Illinois, prepared list of

made. The insertion of such charge herein at this time is something new. It is, therefore, not a matter of which Carrier has any knowledge and is not in a position to now properly rebut. In passing upon such issue the Board should consider only the facts and data properly in the record.

It is further called to the attention of the Board that while this claim was fully discussed and declined on the property by the highest official designated to pass upon such matters on May 1, 1950 (Carrier's Exhibit "H"), no action was taken toward prosecuting the claim to your Board, but permitted it to lie inactive until April 1, 1952, some two years later. Carrier should not now be again called upon to defend the claim anew. Awards 4941 and 4943 of this Division have determined that Carrier should be afforded relief in this respect.

#### CONCLUSION:

It is Carrier's position:

- (1) That the Momence agency was properly bulletined. When claimant's application for the position was withdrawn, the situation was then the same as if no application had been submitted by Taylor. The position was accordingly awarded to the senior qualified applicant. No objection or protest was received as a result of this handling until March 21, 1950.
- (2) Claimant, if he considered himself aggrieved, should have availed himself of the procedure prescribed by Rule 24(b) to insure his interests. Compliance with this rule is mandatory. Such action was not taken. Claimant thereby forfeited all rights to further consideration and the claim is accordingly barred.
- (3) The monetary claim asserted on behalf of claimant was at no time handled on the property and is not properly before your Division.
- (4) The charge of "intimidation" is also something new, has not been handled on the property, and is not supported by the record.

The claim is fully without merit and should be denied.

(Exhibits not reproduced).

**OPINION OF BOARD:** Claim here is based on two grounds which present two separate questions for answer: first, whether Claimant Taylor should have been assigned as Agent at Momence notwithstanding his attempted withdrawal, on the ground that the rule prohibits withdrawal after close of the bulletin, and second, whether Claimant's letter of withdrawal was procured by coercion and therefore in effect no withdrawal.

The first question requires only an interpretation of rules as applied to admitted facts, the attempted answer to which is a function of this Board.

Rule 48 (a) provides that ten days shall be allowed after bulletin for filing applications; Rule 48 (b), that assignments will be made within fifteen days from date of bulletin, and Rule 48 (c), that if senior applicant is not assigned the officer in charge will notify him immediately after the ten days allowed for filing applications, stating reason. Rule 50 provides that an employee "making application for and assigned to a vacancy under a bulletin, must accept such assignment or go on extra list, unless his application is withdrawn before the expiration of the time allowed for making application."

The vacancy was bulletined January 16, 1950. Claimant entered his bid January 19, and on January 30 he wrote cancelling his application. It is contended that Rule 50 prohibits the withdrawal of a bid after closing date of the bulletin. The rule is plainly to the contrary. Nowhere does it prohibit withdrawal at any time. It merely requires the alternative of accepting the assignment or going on the extra list. Even that alternative is not presented except in case of withdrawal after close of the bulletin and also after assignment. There had been no assignment before Taylor withdrew his bid, so his withdrawal merely denied him a right subsequently to claim the assignment, without requiring him to be put on the extra list.

Employees assert as second ground of this claim that Claimant's withdrawal was procured by coercion and therefore in effect was not a withdrawal and his bid should be considered as still effective and require his assignment as agent. Claimant does not deny writing and signing the instrument or that it is a withdrawal of his bid. It is in the record and cannot be expunged, at least until it is found to be involuntary by reason of his being coerced into signing it. That charge is denied by Carrier and its denial raises an issue requiring decision before we can attempt to apply the rules. The question so to be decided is not one of rule but of grievance. The issue presented is one which should be determined first on the property on the record of a prompt and formal hearing with opportunity to produce and cross-examine witnesses, rather than first by this Board from reading ex parte statements taken many months and even years after the event.

Rule 24 (b) provides that a telegrapher "who has received notice of discipline, or who considers himself unjustly treated, shall have a fair and impartial hearing provided he makes written request within ten (10) days after receipt of advice of discipline or cause for complaint, \* \* \*." Claimant comes directly under the rule yet he has at no time had or sought a hearing of his grievance. We think he is now barred by the rule.

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

That both 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

That by reason of failure to request hearing on the property within the period provided by Rule 24 (b) the claim is barred.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 10th day of April, 1953.