

Award No. 6359
Docket No. TE-6365

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway of Texas that the Carrier violated the Scope and other rules of the prevailing Telegraphers' Agreement:

(a) When it utilized Miss Charlena Parker—a person not employed in the class of service covered by the Telegraphers' Agreement and holding no seniority or other rights entitling her to perform work covered by said Telegraphers' Agreement—to fill the position and perform the duties of agent non-telegraph at Randolph, Texas, during the following years and periods of time:

August 31, 1944 to and including December 31, 1944
September 4, 1945 to and including December 31, 1945
September 3, 1946 to and including December 31, 1946
September 1, 1947 to and including December 31, 1947
September 5, 1950 to and including November 30, 1950
August 29, 1951 to and including October 15, 1951

(b) In consequence of its action in thus violating the collective bargaining agreement between the parties, the Carrier shall be required to make redress in the form of a day's pay, at the rate of pay applicable to the Randolph agency position, to an employee under and subject to the Scope and other rules of said agreement for each day on which this outsider was used to fill the position and perform the work of agent at Randolph.

EMPLOYEES' STATEMENT OF FACTS: Randolph, Texas, is a small town situated about equi-distance between Commerce, Texas, and Sherman, Texas, on Carrier's branch line extending from Commerce to Sherman, a distance of 52 miles.

Prior to on or about August 8, 1930, Randolph was a non-telegraph agency station covered by the Telegraphers' Agreement and listed in the wage scale thereof with rate of pay fifty (50) cents an hour.

The Carrier respectfully submits that there is no basis whatever for the claim and requests that the claim be denied.

All data herein has been presented to representatives of the Organization.
(Exhibits not reproduced).

OPINION OF BOARD: It is claimed by the Organization that Carrier has violated the Agreement, more specifically Articles 1, Scope Rule, Article 14—Extra Work and also Article 16—Regularly Assigned Employees Performing Relief Work. Claim is made in two sections (a) and (b). Section (a) contends a violation of the Agreement by Carrier, by employment of Charlena Parker, as Agent-non-telegrapher, at Randolph, Texas, such person not holding seniority rights or any rights to hold a position and perform work of Agent non-telegrapher, as covered by the Telegraphers' Agreement, for periods alleged between August 31, 1944 and October 15, 1951. Section (b) of the claim requests a sustaining Award, for such violation by Carrier, and demands that Carrier be required to compensate an employe a day's pay for each day Charlena Parker was used to fill the position of Agent non-telegrapher at Randolph, Texas.

Carrier contends the employe was properly in its service as an employe, that it has in no way violated the Agreement, and the claim should be denied.

It cannot be denied that Charlena Parker was in the employ of Carrier through a period of years, as evidenced by the record. A portion of the time she was performing the duties of Caretaker, and was compensated at the prescribed rate for such position, the balance of the time she was employed, she performed the duties of Agent non-telegrapher and was paid at the rate prescribed by the Telegraphers' Agreement. The employe was fully qualified to perform the duties, and we can find no rule anywhere in the Agreement, which denies the Carrier the right to employ those who can qualify for the position, in the Carrier's judgment. That is a prerogative of Management, and who must take the responsibility for their judgment in the hiring of employes. The position performed by this employe is fully protected by the Scope Rule 1-1, and Article 28, Paragraph 7 of the Agreement.

We cannot agree with the Organization that Carrier has failed or refused to permit a senior extra telegrapher to exercise his seniority and take the position at Randolph.

After a complete review of the record and exhibits presented by the Organization, we must hold that the burden of proof is on the one who asserts the claim. Mere words that a violation has occurred are not sufficient without positive evidence to substantiate the allegations as made. See Awards 5345, 5962. Sections (a) and (b) of claims should be denied, since the Organization has failed in its proof there were other available qualified employes entitled to the position.

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 Carrier has not violated the Agreement between the parties.

AWARD

Claims (a) and (b) denied, in accordance with the foregoing
Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1953.