

Award No. 6797
Docket No. TE-6597

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway; that

1. The Carrier violated the Agreement between the parties when it failed to notify incumbents of telegrapher-clerk positions at Gulf Jct., Oklahoma of a temporary vacancy on the Agent's position at Pauls Valley, Oklahoma during the period September 2, 1951 through October 31, 1951; and further violated the Agreement when it declined to permit R. V. Lewis, the senior telegrapher-clerk at Gulf Jct., so desiring, to advance to said vacancy; and

2. The Carrier shall now pay R. V. Lewis the difference between the amount he earned and the amount he would have earned on the position of Agent at Pauls Valley, Oklahoma, for the period aforesaid.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of June 1, 1951, between the parties to this dispute is in evidence.

Page 85 of the current Agreement shows the following:

Pauls ValleyAgent..... \$391.81 Mo.
"Gulf Jct".....Telegrapher-Clerk (3) 1.66 an hr.

in the selection of capable employes for the safe and efficient operation of the railroad.

All that is contained herein is either known or available to the Employes and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a telegrapher in an office where more than one shift was worked. On September 1, 1951 the Agent at that office became ill and the Carrier filled the vacancy so caused as a temporary vacancy with a man in the same office as claimant but junior to him. Employes claim a violation of Section 8-a, Article XX of the Agreement which reads as follows:

"When a temporary vacancy of thirty (30) days or less occurs in an office where more than one (1) shift is worked, the employes in that office will be notified thereof and, if qualified, will be permitted, if they so desire, to advance to preferred tricks therein, including the Agent's position (other than supervisory) at the location, according to their Division seniority; the trick left vacant to be filled from the extra list. A point where the position of Agent is listed in the wage scale and is located in a separate building or office from the telegraphers performing station work will, for the purposes of this Section 8-a, be considered as one office. The Railway Company is not to be committed to any additional expense because of change in shifts resulting from the application of this Section."

The rule above quoted clearly contemplates that some form of notice should be given by the Carrier to employes working in the office where the vacancy occurs. It is not necessary to here decide what form that notice should take nor the manner in which it should be given for it is apparent that no notice of any kind was given by the Carrier of the existence of the temporary vacancy. The telegraph message of September 1, 1951 which the Carrier member of this Board has so ingeniously argued as constituting notice under the rule cannot be so considered. It is clear from wording thereof that it contained instructions to the junior man to fill the temporary vacancy as well as concomitant instructions to the others to whom it was addressed to do what was necessary because of the shifting of personnel resulting from the filling of the vacancy.

The Carrier's basic argument in resisting this claim is that the primary consideration in the rule is the question of qualification and that the rule requires notice only to those who are qualified to fill the vacancy. That argument is not supported by the language of the rule. The purpose of the rule as manifested by its wording is to afford all employes in the office an opportunity to indicate their desire to advance. After notice is given and application made to fill the vacancy then the question of qualification is to be determined by the Carrier. Here, Carrier asserts that the claimant was not qualified while the Employes assert that he was. From the evidence of record it appears that the Carrier's assertion that the claimant was not qualified comes as an after-thought. When request was made by claimant to the Chief Dispatcher to fill the vacancy he was advised that it was already filled and that it was quite an undertaking to transfer accounts at such a large station and, furthermore, that he (the Chief Dispatcher) doubted if claimant had sufficient experience to handle an agency of the size involved. It is shown in the record that a transfer of accounts was not necessary since there was a cashier employed at the station. The explanation of the chief dispatcher indicates that claimant was not given reasonable consideration for the vacancy to which he aspired. Under the circumstances we can arrive at no conclusion other than that Carrier did not comply with the rule.

We are not impressed with the argument that the claim would be invalid for any period over 30 days. The Agreement provides that temporary vacancies known to be of more than 30 days duration should be bulletined and filled as such. Apparently it was not known by Carrier that this vacancy would extend beyond the 30 day period when it first arose. So long as it continued as an unadvertised vacancy the provisions of Article XX, Section 8-a would continue to apply to it.

We find that the claim should be sustained.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1954.