

Award No. 8214
Docket No. TE-7740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

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

1. The Carrier violated the Agreement between the parties when it advanced rest day relief wire chief Solhaug, at San Bernardino, California, to a temporary vacancy on the Day Wire Chief's position in said office beginning October 11 and extending through October 31, 1954; and used extra telegrapher V. C. Andersen to fill the resultant vacancy on rest day relief position belonging to Solhaug; and

2. The Carrier shall now be required to compensate Relief Wire Chief Solhaug for each day October 11 through 31, 1954, in an amount equivalent to 8 hours' pay at the pro rata rate applicable to his regular position; compensate him at the rate of time and one-half for all service performed outside the hours of his regular assignment and 8 hours at the time and one-half rate for any service performed on the assigned rest days of his regular position; and

3. The Carrier shall now compensate V. C. Andersen for each day October 11 through 31, 1954, the difference between what he received and what he would have received on the position of Day Wire Chief; compensate him at the time and one-half rate of the Day Wire Chief position for any time worked outside the assigned hours of said position and 8 hours at the time and one-half rate on any day he was required to perform service on the rest days assigned to the position of Day Wire Chief.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, is in evidence.

The Carrier maintains a relay telegraph office at San Bernardino, California, in which it employs several printer clerks and telegrapher-printer clerks occupying Class 2 positions. Their assigned hours and rest days are unimportant to a determination in this dispute.

In addition to the above mentioned positions the following Class 1 positions are in existence in the relay office at San Bernardino, California:

8 hours at pro rata rate applicable to his own position for each day October 11 to 29 inclusive (this furthermore and notwithstanding that Friday was a rest day of both his regular position and that of Day Wire Chief which he temporarily occupied), (2) payment at penalty rate of time and one-half for all service performed by him outside the hours of his regular assignment, and (3) payment at penalty time and one-half instead pro rata rate for 8 hours' service performed on Day Wire Chief position on rest days of his own position. This Board has repeatedly recognized and held that it will not assess double or pyramided penalties. See Third Division Awards 2346, 2695, 2823, 2884, 3444, 4109, 5333, 5423, 5548, 5549, 5638 and others.

* * * * *

In conclusion the Carrier reiterates that the claim of the Employees in the instant dispute is wholly without schedule support or merit, and should for reasons which have been stated herein, be denied in its entirety.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This docket does not reveal any material dispute with respect to the facts, other than the question of whether or not Claimant Andersen was qualified to perform the duties of the Day Wire Chief position here involved. It is agreed that under the Agreement rules Claimant Andersen was entitled to the position in so far as seniority was concerned, provided he was qualified to perform the duties of the position.

The Respondent Carrier contends that Andersen was not qualified to perform the full duties of the Day Wire Chief position. Hence he was not assigned to it. The Petitioner Organization, on the other hand, contends that the Claimant was qualified as evidenced by the Carrier having assigned him to such positions on numerous occasions.

In view of these respective positions, it is evident that the issue before the Board resolves itself into a matter of determining whether Claimant Andersen was qualified for the position in question.

Article XXI, Section 2, of the effective Agreement is the controlling provision of the Agreement. It reads:

"Employees will be in line of promotion to positions covered by this Agreement and, where ability and qualifications are sufficient (which may be determined by examination), seniority will prevail. Employees declining promotion do not forfeit seniority rights."

Again Section 10-b of Article XXI provides in pertinent part:

"Temporary vacancies of thirty (30) days or less on positions other than Manager or Manager-Wire Chief in Class 1, if to be occupied, will be filled by the senior available qualified employee on the extra list. * * * " (Emphasis added.)

The record shows that Claimant Andersen has never passed the qualifying examination for the position in question, which the Agreement gives the right to require. On the contrary, it is in evidence that he took the examination on July 26, 1950 but failed to pass. There is no evidence before the Division that shows any further interest on Andersen's part to qualify for the position.

The only fact of record which argues for Andersen's possible qualification for the position is the Carrier's action on several occasions in using him on Wire Chief positions.

The Division has generally held that in the absence of agreement restrictions the Carrier may make the initial determination of the qualifications of employes. Under such circumstances the Division will not normally overrule the Carrier's action unless it can be shown that the action was arbitrary, unreasonable, capricious or of a discriminatory character. The record before us here does not show that the Carrier's action in the instant situation was arbitrary, unreasonable, capricious or of a discriminatory character.

While Claimant had admittedly performed Wire Chief work occasionally and under limited circumstances, this is not sufficient to overrule the fact that he had never qualified for the full range of the duties of the position. Neither is it in and of itself sufficient reason to justify our finding that the Carrier acted in bad faith.

In reaching these conclusions, which dictate a denial award, we are acting in accordance with a substantial number of awards of the Division where similar issues have been decided. Awards 4687, 5940, 5966, 6143, 6829, 6877.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 23rd day of January, 1958.