Award No. 8324

Docket No. TE-7263

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Pennsylvania Railroad Company that:

Request that C. O. Morgan's name be removed from Roster of Agents and Assistant Agents.

EMPLOYES' STATEMENT OF FACTS: The regular incumbent of the Agency-Part-Time at Atwater, Ohio was furloughed for Military Service effective October 30, 1950. Effective the same date C. O. Morgan was employed and used to fill this temporary vacancy. As there was a question of the length of time that the regular incumbent of the Agency's position at Atwater would be in Military Service, the temporary vacancy was not immediately advertised as it was anticipated that he would return to the service of the Railroad before sixty days. This temporary vacancy was, however, advertised on January 25, 1951 and awarded to C. O. Morgan effective February 12, 1951.

POSITION OF EMPLOYES: The governing agreement between the parties as to regulations and rates of pay became effective September 1, 1949, rates of pay effective February 1, 1951. This Agreement is divided into two groups.

Group 1. Governs Station Agents and Assistant Agents. Classified herein.

Group 2. Governs Managers and Assistant Managers.

Wire Chiefs and Assistant Wire Chiefs
Train Directors and Assistants
Telegraphers
Telephone Operators (Except Telephone Switchboard Operators)
Block Operators
Operator Clerks
Levermen
Printer-Operators

Group 1 Employes are concerned in this case.

Following the assignment of C. O. Morgan to the position at Atwater, a permanent position was advertised on Bulletin No. 6 at Austinburg, Rock Creek and Rome, Ohio. C. O. Morgan placed a bid for this position and it was awarded to him on June 18, 1951. There was no protest filed by the Employes to this award. This is significant because it is evidence of their acquiescence in Carrier's action in granting seniority to Mr. Morgan on February 12, 1951 and their agreement that C. O. Morgan had a right to bid for this position, which right is reserved to qualified Group 1 employes already having seniority in the group. Furthermore the permanent position at Austinburg was worked by C. O. Morgan on June 26, 1951. While C. O. Morgan was working the permanent position at Austinburg on June 26, 1951, he performed all the duties of that position and was, for as long as he remained on the position, a regularly assigned employe on a permanent position.

It is submitted, therefore, that C. O. Morgan was properly granted seniority on the Agents' and Assistant Agents' roster as a result of being awarded a temporary advertised vacancy and this fact became increasingly evident when C. O. Morgan bid on and worked a permanent assignment without protest from the Organization.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required to Give Effect To the Said Agreement and To Decide the Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interprctation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that under the applicable Agreement, C. O. Morgan who was awarded and assigned to an advertised temporary position at Atwater, Ohio, on February 12, 1951, was properly entitled to seniority as of that date on the Agents' and Assistant Agents' roster; that the practice existing on Carrier's property supports this interpretation and that no provision of the applicable Agreement prohibits the granting of Agents' seniority under such circumstances.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

All data contained herein have been presented to the Organization involved.

(Exhibits not reproduced)

OPINION OF BOARD: A temporary vacancy was created in the part time position of Agent at Atwater, Ohio. C. O. Morgan was employed by the Company on October 30, 1950, and assigned to that temporary vacancy. The Company had not bulletined the temporary vacancy because it is only

required by the Agreement to do so when it is expected that the regular incumbent will be absent for sixty days. When that absence continued beyond sixty days, the temporary vacancy was bulletined and was awarded to C. O. Morgan effective February 12, 1951. The Carrier assigned him a seniority date of February 12, 1951 on the Agents' list, which came to the attention of the Organization the next time such list was published, in January, 1952.

Subsequent moves of Mr. Morgan appear in evidence, but they are immaterial to the issue presented here, which is whether the Carrier violated the Agreement in assigning Morgan seniority as an Agent dating from February 12, 1951. The applicable regulation is 2-B-2, which reads:

> ". . . the seniority of an employe . . . shall date from the first day on which he was regularly assigned to a Group 1 position . . .".

The controversy is centered on the words "regularly assigned". The Organization contends that an employe is not regularly assigned when he is merely the temporary incumbent of a position regularly held by another. The Carrier, on the other hand, maintains that "regularly assigned" means assigned by bulletining the vacancy, whether the vacancy be temporary or permanent. It concedes that Morgan acquired no seniority by his original assignment on October 30, 1950, because there was no advertisement of the vacancy.

The language of the Agreement is ambiguous, and evidence introduced into the record while the claim was in progress on the property, to show the intent with which the language was adopted, would have been helpful. No such evidence was introduced on the property. Nor was any evidence introduced or even referred to while the claim was being progressed on the property as to any interpretation placed on the language by past practice. No issue was made as to past practice.

The issue of past practice was first injected into the proceedings after the claim was appealed tp this Board. The Organization filed its Ex Parte Submission on July 21, 1954. On October 25, 1954, in its Ex Parte Submission, the Carrier raised the issue of past practice and cited a number of instances where seniority rosters had shown the seniority dates of agents identical to their temporary assignments. Five of these instances had occurred before the case before us arose. This would be quite persuasive evidence if we were permitted to consider it. But it is well settled by our awards that new issues not raised on the property, and evidence not brought to the other party's attention while the case was in progress on the property, cannot be considered by this Board. Awards Nos, 1485, 3950, 5095, 5457, 5469, 6657, 7036, 7601, 7785, 7848, 7850. There have been a few departures from this principle, under special circumstances, but in the main the rule has been adhered to.

The reason for the rule is obvious. Genuine efforts should be made to settle disputes on the property, to avoid cluttering the calendar of this Board with cases that could have been settled if the full facts had been brought out and considered. Only by full disclosure of positions and evidence while the case is on the property, can the parties hope to reach agreement.

There being no evidence of past practice properly before us, we must confine our consideration to the language of the Agreement. The issue is, what is meant by the words "regularly assigned."

Morgan was first assigned to the position at Atwater, on a temporary basis, on October 30, 1950. This assignment, being made under the impression that it would be for less than 60 days, was properly made without advertising by bulletin. But it could be said to be "regular," in the ordinary dictionary and common sense meaning of that term. It was proper, and

within the terms of the Agreement. It was clearly not "irregular." Yet the Carrier did not consider it "regular" within the meaning of regulation 2-B-2, for it did not assign Morgan a seniority date of October 30, 1950.

But a little over three months later, when it bulletined the job as a temporary vacancy, and again assigned Morgan to it, on February 12, 1951, it considered this assignment "regular." Though no more proper than the prior assignment, this one is considered regular and the earlier one irregular.

It is apparent that the Carrier is considering the term "regularly assigned" as meaning "assigned by bulletin." Of course the term does not have that meaning either by dictionary definition or by common usage. If it has such unusual meaning in this Agreement, there was no evidence to that effect introduced while the claim was on the property.

The inherent, normal, common-sense meaning of the term "regularly assigned" supports the Organization's position that it excludes a mere temporary assignment. The employe "regularly assigned" to the job, that is, the man whose regular job it was, was away in the Army. Morgan held it only as a substitute, not regularly. He held it no more regularly after February 12, 1951, than he had between October 30, 1950 and February 12, 1951. He was not irregularly assigned to it in one case any more than in the other. If one assignment did not confer seniority, neither did the other. Since the Carrier admits that the assignment of October 30 conferred no seniority, we must hold that neither did the assignment of February 12. For these reasons the claim will 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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1958.