Award No. 9916
Docket No. TE-9154

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Terminal, Dallas, Texas, that:

1. Carrier violated Article 1 of the Telegraphers' Agreement when commencing on January 5, 1956 and continuing thereafter each week, as itemized in Employes' Statement of Facts, it caused, required or permitted Martin Vance Blackwell, a person not covered by the Telegraphers' Agreement, to perform rest day relief work on the third shift telegraph operator's position at Dallas in connection with receiving, copying and delivering train orders and messages by means of telephone and mechanical telegraph machines at the Union Station of the Union Terminal Company, Dallas, Texas, which work is, by the agreement, solely and exclusively reserved to employes covered by the Telegraphers' Agreement.

2. Carrier further violated the Telegraphers' Union Shop Agreement, effective March 16, 1953, by permitting Martin Vance Blackwell to work in violation of said Union Shop Agreement, Section 1 and Section 5 by permitting and requiring said Blackwell to relieve Telegrapher L. C. Fisher in violation of said Telegraphers' Union Shop Agreement.

3. Carrier shall compensate L. C. Fisher in accordance with the rules of the Telegraphers' Agreement one day's pay for each day the agreement was violated.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

In the Carrier's telegraph office in the Union Station, Dallas, Texas, it maintains around the clock service seven days per week which requires three seven day positions and one regular relief position for rest day relief. The assignment of the regular relief position covers two days on the first shift, two days on the second shift and one day on the third shift leaving the second rest day of the third shift to be relieved otherwise (tag end). It is with the third shift that we are here concerned which has assigned hours 10:30 P. M. to 6:30 A. M. and assigned rest days Wednesdays and Thursdays; the Wednesday rest day is a part of the regular relief assignment and the Thursday rest day is unassigned. Claimant Fisher was regularly assigned to the third shift.

interpretation prevails. (4) N.L.R.B. decisions required the Carrier to give earnest consideration to Mr. Blackwell's re-application for employment. Inasmuch as he was qualified to perform the work we had to offer and an extra employe was needed, we had no legitimate reason to deny employment to Mr. Blackwell. These decisions authorize the action followed in the instant case.

In considering the entire record, we maintain that the claims presented by the Union in behalf of Mr. Fisher should be denied.

It is affirmatively stated that all matters submitted herein either have been presented to the Employes' duly authorized representative or he has knowledge of same and they are made a part hereof.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: Employes state that the Carrier has violated Article I, Section B of its Scope Rule and also Article XVIII, Section 1(n) when it permitted Employe, Martin Vance Blackwell, to perform work on the unassigned days of the claimant's position.

The Employes further state that Martin Vance Blackwell was employed by the Carrier on July 2, 1953; that on August 22, 1953, the General Chairman notified Blackwell of the sixty-day provision of the Union Shop Agreement. On August 31, 1953, Blackwell resigned his employment with the Carrier. On January 9, 1954, Blackwell was re-employed by the Carrier. On March 15, 1954, Blackwell resigned his employment with the Carrier. On December 30, 1954, Blackwell was re-employed by the Carrier. On August 28, 1955, Blackwell's employment with the Carrier was terminated as a result of a hearing held which showed that he had not complied with the provisions of the Union Shop Agreement. On August 29, 1955, Blackwell was re-employed by the Carrier. On April 29, 1956, Blackwell's employment with the Carrier was terminated for non-compliance with the Union Shop Agreement.

When Blackwell started to work for the Carrier on July 2, 1953 and continued to work through August 31, 1953, he had completed forty-two days of compensated service. Therefore, under Section 1 of the Union Shop Agreement, as a condition of his continued employment, he should have become a member of the Telegraphers' Union within sixty calendar days of the date that he first performed compensated service as such for the Carrier. The first day that he performed compensated service for the Carrier was July 2, 1953. On January 28, 1954 when the General Chairman notified the Carrier that Blackwell had not complied with the Union Shop Agreement, the Carrier should have cited employe Blackwell. However, the Carrier refused to cite employe Blackwell, stating that in their opinion, when he was re-employed by the Carrier on January 9, 1954, he became a new employe and that all the conditions of the Union Shop Agreement would apply to him as a new employe before the Carrier could cite him for non-compliance with the Union Shop. That is, the Carrier states that this new employment of Blackwell would require that he have thirty days of compensated service from January 9, 1954 before he could be required to join the Telegraphers' Union within the sixty-day period, as specified under Section 1 of the Union Shop Agreement.

The Board finds from a careful reading of the Union Shop Agreement and the evidence presented by the parties, that Blackwell's first day of compensated service with this Carrier was July 2, 1953 and that when he resigned on August 31, 1953, he had thirty days of compensated service with the Carrier; that when he was again re-employed by the Carrier on January 9, 1954, he was subject to the Union Shop Agreement, as that agreement states:

"* * * except as hereinafter provided, shall as a condition of their continued employment, subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty calendar days of the date they first performed compensated service as such employes after the effective date of this agreement * * *"

The words "continued employment" in the context of Section 1 of the Union Shop Agreement are broad enough to have covered, and to have made improper, the re-hiring of an employe after he has resigned, or to consider him a new employe who would have to have thirty days continuous compensation after the new hire before again activating the above-quoted provision of the agreement.

The Board finds that Martin Vance Blackwell was not a bona fide employe of this Carrier from January 28, 1954, the date the General Chairman requested the Carrier to cite him for noncompliance with the Union Shop Agreement. Therefore, under Article I, Section B, he could not be considered as coming under the Telegraphers' Agreement and perform Telegraphers' work and when the Carrier used him to perform work on the unassigned days of the claimant, it violated Article XVIII, Section 1(n) of the Telegraphers' Agreement, which reads as follows:

"WORK ON UNASSIGNED DAYS

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The Employes' claim will be sustained for the days worked by Blackwell on claimant's rest days from January 28, 1954.

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

That the parties waived oral hearing;

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 violated the Agreement.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1961.

DISSENT TO AWARD 9916 — DOCKET TE-9154

The majority in its Award writes provisions into the Union Shop Agreement which the negotiating parties had not placed there and places a construction on the provisions which the parties did include but which the parties manifestly never intended — the net effect being to transform the Union Shop Agreement into a Closed Shop contract.

The majority decides that a resigned employe later rehired by the Carrier is, so far as the Union Shop Agreement is concerned, not a new employe but one who must show Union standing as a condition precedent to employment. This finding not only does violence to the Union Shop Agreement, but is contrary to law.

The Award recites: "The words 'continued employment' in the context of Section 1 of the Union Shop Agreement are broad enough to have covered, and to have made improper, the rehiring of an employe after he has resigned, * * *." Had the framers of the Union Shop Agreement intended to bar forever the rehire of an employe, they could easily have said so. They did not.

Section 3 of the Agreement in contemplation of interruptions in the service of an employe such as furloughs, absence due to sickness, and leave of absence provides 35 days after return within which to become a member of the Organization representing his craft. An employe in these circumstances has retained his seniority during the interruption and yet he is not required to return to work as a Union member on the day of his return. In spite of this the majority concludes a man who resigns and thus completely severs his employment relationship, once having had 30 days of compensated service with a carrier, cannot thereafter forevermore be rehired. Not only are the Carrier's rights to determine whom it will hire violated by this Award, but the employe's future job opportunity with his former employer completely destroyed as well.

For these reasons the Award adopted by the majority is palpably wrong and should not be followed as a precedent by this or any other Board.

/s/ D. S. Dugan

/s/ R. A. Carroll

/s/ P. C. Carter

/s/ W. H. Castle

/s/ J. F. Mullen

REPLY TO DISSENT, AWARD 9916, DOCKET TE-9154

The Carrier Members, in their dissent, merely repeat the arguments that were made to the Referee. Those arguments were properly found to be without merit. They are equally groundless when made in the form of a dissent.

Award 9916 represents the results of careful consideration of the intent of the parties as expressed by the language of their contracts and application thereof to the facts which gave rise to the dispute. It is, therefore, a correct decision and a proper exercise of the duty of this Board to give effect to agreements as written.

J. W. WHITEHOUSE
Labor Member