

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur Stark, Referee

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the agreement between the parties when it required or permitted an employe having no rights under the Agreement to fill vacancies on the position of 1st operator at Broken Bow, Nebraska, on November 23, 24, 25, 30 and December 1, 1955.
2. Carrier now be required to pay R. D. Wright a day's pay on November 24, 25 and December 1, 1955, and H. C. Schake a day's pay on November 23 and 30, 1955.

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

Broken Bow, Nebraska, is a station on the Alliance Division of the Carrier, with two positions under the Telegraphers' Agreement; one of Agent-Operator and the other, 1st Operator, with assigned hours 10:00 A. M. to 6:00 P. M., assigned rest days Monday and Tuesday. Operator L. Z. Young, regularly assigned incumbent of the 1st Operator position, did not work on his assignment on November 23, 24, 25, 30 and December 1, 1955, having requested relief on those dates due to illness in his family. The Carrier used Mrs. E. M. King to relieve Young. Mrs. King's seniority under the Telegraphers' Agreement had been terminated on July 7, 1950, when the position to which she was regularly assigned, that of Agent-Operator at Berwyn, Nebraska, was abolished. For personal reasons she did not wish to leave Berwyn and was unable to be available at all times for extra work, which made it necessary for her to give up her seniority rights under the Telegraphers' Agreement. After the abolishment of the Agent-Operator position at Berwyn, the Carrier established at that point a job as "custodian" (not under the Telegraphers' Agreement), which she accepted and held until she was re-employed as a telegrapher on February 3, 1956. At the time operator Young was off his assignment there were no extra employes available.

OPINION OF BOARD: There are two Telegrapher position at Broken Bow, Nebraska, a station on The Alliance Division. In 1955 Operator L. Z. Young was assigned to one of them; his days of work were Wednesday - Sunday, with Monday - Tuesday rest days. In the Fall of 1955 Young (who worked the first trick, 10:00 A. M. - 6:00 P. M.) had to absent himself from work because of illness in his family. No extra employees were then available at Broken Bow.

In Fall 1955 Claimant R. D. Wright was regularly assigned to Relief Position No. 1; he worked four days at Broken Bow and one at Seneca, Nebraska (some 82 miles from Broken Bow). His regular rest days were Thursday - Friday.

Claimant H. C. Schake was regularly assigned to Relief Position No. 2 and worked five days at Seneca; his rest days were Wednesday - Thursday.

On November 21, 1955 Chief Dispatcher Erixson wired Mrs. E. M. King, Custodian at Berwyn, requesting her to relieve Young at Broken Bow for a few days starting November 23. O.R.T. Local Chairman S. W. King protested immediately, advising Erixson on November 22 that (1) As a Custodian Mrs. King held no rights as a telegrapher and should not be worked if one were available; (2) Schake was available Wednesday and Thursday, Wright on Thursday and Friday.

Despite the protest Management assigned Mrs. King to fill in for Young. She worked at Broken Bow on November 23, 24, 25, 30 and December 1.

According to the Carrier Mrs. King was properly assigned since (1) she was an Extra Operator, and (2) Under Rule 23(h) Extra employees are to be given preference for such assignments. This Rule provides:

“(h) Extra employees, if qualified, other than those who have completed their work week of forty hours, shall be given preference to all extra work and be assigned in turn according to seniority, except when a temporary vacancy of ten (10 working days or more occurs in an office where more than one shift is worked, employees may be permitted, if they so desire, to move up temporarily and the remaining shift be filled by the extra employee. Under this rule, extra employees must accept the work to which their seniority entitles them.”

The O.R.T. agrees that if Mrs. King was a bona fide Extra Operator she was rightfully assigned to relieve Young. But, the Organization contends, she was not an Extra employee nor did she hold any seniority rights in the Telegraphers' unit.

The available facts concerning Mrs. King, as gleaned from the record, are as follows:

1. Her earliest known seniority date was October 13, 1944. (Record, p. 39).
2. She resigned from Telegraphers service (thus terminating her seniority) on July 7, 1950 when her position at Berwyn was abolished. (Record, p. 4).

3. Between July 1950 and February 1956 she worked as a Custodian at Berwyn, a position not covered by the O.R.T. Agreement. (Record, p. 4). The record does not reveal the exact periods of Mrs. King's assignments. The O.R.T. states (Record, p.13), and so advised the Carrier in its February 24, 1956 appeal that she "repeatedly declined to go on the extra board and fill extra assignments in turn as required of other employees and in accordance with the rules." However, no specific dates were mentioned.

4. On May 2, 1955, the Carrier asserts (Record, p. 41), Mrs. King was re-employed as a Telegrapher and, thereafter, given vacation relief work. No specific dates are mentioned with the exception of August 22-26 when she relieved O.R.T. Local Chairman King (at his own request) during his absence on "personal" leave — not vacation leave. The Carrier also states that no vacancies arose on the Alliance Division between August 26 and November 23 for which Mrs. King was eligible. (Record pp. 28-9).

5. In January 1956, according to the Carrier, Mrs. King refused to accept an extra assignment, thus forfeiting her Telegrapher's seniority (Record, p. 30). The O.R.T. affirms that this statement has no basis in fact, (Record, p. 38), noting that in its June 1, 1956 denial letter Management stated "The last time Mrs. King entered service was on August 22." There is no evidence that she was disciplined or suspended under Rule 20(a) which provides in part:

"(a) An employee subject to the terms of this agreement who has been in service more than sixty (60) calendar days, who has been disciplined or suspended will be apprised in writing of the charges against him, and be accorded a hearing upon request."

6. On February 3, 1956 Mrs. King entered Telegrapher service (Record, pp. 5, 30) and her name appeared on the subsequent July 1, 1956 Seniority Roster. (Her name had not appeared on any prior Roster since 1950.)

While several dates were suggested, during the course of these proceedings, as appropriate for determining Mrs. King's seniority status in 1955, the key question may be put this way: Assuming she had not acquired seniority status prior to November, 1955, did Management violate the Agreement in retaining Mrs. King to relieve Operator L. Z. Young? (It may be noted that in Carrier's first written answer to the grievance Superintendent Harris stated, in part: "However, there is nothing in the Agreement that would prevent the Company from re-employing Mrs. King as an opeartor . . .")

The evidence shows that a temporary vacancy in a regular assignment existed, in November 1955, at Broken Bow. All regular employees were assigned during this period; no extra employees (assuming Mrs. King was not one) were available. Rule 8(n), under the circumstances, was not applicable:

"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 employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

We see nothing in the Agreement which would prevent Management, at this juncture, from hiring an additional extra employee. There are no

contractual prerequisites for obtaining seniority status. Rule 21(a) provides simply:

“Seniority rights date from the last time of entering the service and will extend, over each division superintendent’s district as existing on the effective date of this agreement, except as otherwise provided in this rule. . . .”

True, an extra employe, in order to retain seniority status must comply with Rule 23(h), cited above, which provides in part:

“ . . . extra employes must accept the work to which their seniority entitled them.”

But the penalty for failure to accept work is loss of seniority. There is no contractual prohibition against subsequent acquisition of seniority rights as an extra employe (provided, of course, no current employe’s rights are violated).

Assuming then, in Mrs. King’s case, that she had lost all seniority rights prior to November 1955, we see no reason why the Carrier was prohibited from hiring her on November 28 as an extra employe and retaining her in that status as long as she complied with applicable contractual requirements. Accordingly, the claim will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1962.