

Award No. 10879
Docket No. TE-13041

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers that Agent A. J. Bauer's employment relation was improperly severed by the Carrier on or about July 3, 1959, and that the Carrier shall be required to retroactively restore Mr. Bauer's status as an employee from that date until his retirement August 10, 1960, under the provisions of the Railroad Retirement Act.

EMPLOYEES' STATEMENT OF FACTS: This is not a money claim.

Claimant, A. J. Bauer, entered Carrier's service as a telephoner at North Jefferson (Jefferson City, Mo.) June 18, 1918, and thereafter remained in continuous service until he was notified that his employment relation had been terminated sometime between July 3, 1958 and October 31, 1960.

Prior to July 11, 1958 Mr. Bauer was the regularly assigned agent at Moran, Kansas. Also, at that time there were three telegrapher-levermen positions at that point. On July 3, 1958 the Carrier abolished telegrapher-levermen positions. These abolishments created displacement rights for the incumbents of such positions which resulted in W. J. Stitzel displacing Bauer, his junior, from the Moran agency position, on authority of the Chief Dispatcher W. N. Taylor's telegram:

"Parsons 7/8/58

AJB WJS Moran

W. J. Stitzel will displace A. J. Bauer as Agent, Moran,
Kansas effective July 11, 1958. Bauer will make cutoff
July 10 and turn keys over to Stitzel
CN-95. Joint AJB WJS.

WNT"

In spite of his 40 years of seniority Bauer found that there were no positions held by employees junior to him on which he could exercise displace-

Thompson therefore recognizes and concedes that Mr. Bauer did not file and renew his address and that he was not restored to service as provided in paragraph (d), Rule 3, and therefore his employment rights and service terminated as provided therein. General Chairman Thompson's contentions that Bauer filed his address from September 3, 1958, are also inconsistent and in conflict with and refuted by his unsupported contentions that Bauer exercised his seniority as provided in paragraph (a), Rule 3.

General Chairman Thompson contends Bauer was carried on the seniority roster to and including July 1, 1960, and that Superintendent R. B. George acknowledged and accepted Mr. Bauer's letter of August 10, 1960, advising of his retirement on annuity under the Railroad Retirement Act, but that is immaterial and irrelevant as such action and handling was not in accordance with the agreement but was contrary thereto.

General Chairman Thompson's protest and contentions are not therefore supported by the facts and evidence, but as a matter of fact are in violation of the agreement.

General Chairman Thompson's protest is not a dispute between an employe and a carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, but is clearly a dispute between a non-employe or former employe and a carrier growing out of a request for transportation which has not been presented to and is not before the Board for consideration and determination, and is a dispute over which the National Railroad Adjustment Board has no jurisdiction.

All data submitted in support of the Carrier's position have heretofore been submitted to the Employees or their duly accredited representative.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular, the allegations of the Organization and Employees in this alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons the Missouri-Kansas-Texas Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, dismiss or deny said claim and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier contends that this is not a dispute between an employe and Carrier growing out of an agreement concerning rates of pay, rules or working conditions but is a dispute between a former employe and the Carrier growing out of a request for transportation.

It is the further contention of the Carrier that the only claim submitted on the property was the failure to give Claimant Bauer, a retired employe, foreign line transportation; **that there was no claim presented** to the Carrier on the property that his employment relationship was improperly severed by

the Carrier on or about July 3, 1959, and that his employment status should be retroactively restored to that date until his retirement in 1960; the Carrier further urges that this Board, therefore, is without jurisdiction to determine the claim now presented as Section 3(1) of the Railway Labor Act restricts the jurisdiction of this Board to the determination of the same claim which has been handled in the usual manner on the property.

In a letter, dated November 21, 1960, addressed by the General Chairman to the Vice-President — Personnel of the Carrier we note, the following:

“He has had more than 40 years service and he has enjoyed annual transportation for the past three (3) years and I personally know that it has been an error on somebody’s part that they have taken the position that he is not entitled to transportation as a retired employee and will be most grateful to you if you will straighten this out, advising.”

And in a letter dated December 31, 1960, from the General Chairman, the following assertion is made:

“As an extra precaution and to see that Mr. Bauer and others are not disqualified over some technicality now or in the future, we are filing a claim with you that any expense that he has to undergo, by reason of your failure to comply with the Agreement and issue him the transportation that he is entitled to under the provisions of the Agreement, Rule 19 paragraph (c) is to be reimbursed by the Railroad Company.”

No claim or request for foreign line transportation or reimbursement has been presented to this Board. (It is conceded that a retired employee is not entitled to foreign line transportation as a matter of right but rather as a gift or gratuity which is usually and customarily granted by the Carrier.)

The claim presented to this Board by the appeal of the Petitioners is not in compliance with the provisions of Section 3(1) of the Railway Labor Act in that it is not the same claim which was presented to and handled by the Carrier on the property. It is essential that the issues presented here must be the same as those which were determined on the property.

It is evident that the question and the only one presented here by the Petitioners here is an academic one — What was the status of Claimant Bauer from the time he was displaced in July of 1958 until he retired in August of 1960? That question cannot be determined here as there are no questions properly before this Board for determination.

There are no issues for this Board to determine.

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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1962.