

Award No. 11582

Docket No. TE-10187

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. Carrier violated, and continues to violate, the agreement between the parties when it abolished the position of Agent at Roodhouse, Illinois, and transferred the work of the position outside the seniority district.

2. Carrier be required to restore this position to Seniority District No. 1 (Eastern Division) and compensate C. T. Wilkinson, regularly assigned incumbent of the position, for any loss of wages and reimburse him for all expenses incurred commencing January 16, 1957 and continuing thereafter until the violation is corrected.

3. Carrier be required to compensate any other employees adversely affected for any loss of wages and reimburse them for all expenses incurred commencing January 16, 1957 and continuing thereafter until the violation is corrected.

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

This dispute primarily concerns seniority districts and seniority rights in those districts; the cause for claim arose when the work of the position of Agent at Roodhouse, Illinois, was transferred outside the confines of Seniority District No. 1. Rule 21 of the agreement defines the Seniority Districts. The Rule reads:

"RULE 21

SENIORITY

(a) Seniority will date from the last date employe enters the service and commences work under pay on a position covered by

The Telegraphers' Organization recognized that the June 1, 1953 Agreement did not support the claim here before the Board and a contract change was necessary before such a claim was justified. Because the proposed change would restrict the Carrier's actions, such as the changes at Roodhouse, the proposed change was not agreed to.

The Organization is attempting by a procedure before this Board to have the June 1, 1953 Agreement construed in such a way that it would have the same meaning as the proposed contract change which was rejected. This Board does not have the authority to change Agreements.

CONCLUSION

The Agreement provides for the change of a non-telegraph position to an Agent-Telegrapher position and if the incumbent of the position prior to the change is not qualified, he may exercise his rights in accordance with the Agreement. This is what was done at Roodhouse. The claim of Mr. Wilkerson is without merit and should be denied.

Carrier reserves the right to make an answer to any further submission of the Organization.

OPINION OF BOARD: The Seniority Districts involved in this controversy are defined in the Agreement.

"RULE 21

"Seniority

* * * * *

"(b) Seniority districts shall be defined as follows:

"District 1.

All positions, Chicago to Venice, inclusive; Dwight to Washington, inclusive; Bloomington to Roodhouse, inclusive; Roodhouse to Godfrey; Peoria to Sherman; Airline.

"District 2.

Drake to Kansas City, inclusive; Mexico to Fulton, inclusive; except that seniority of employes in Districts 1 and 2 applies to "GO" office Chicago, "B" office Bloomington, and "RO" office Roodhouse."

Prior to the time of the alleged violation of the Agreement, Claimant C. T. Wilkinson was occupying the position of agent in Seniority District No. 1 (Eastern Division); J. W. Farrell, holding seniority in Seniority District No. 2 (Western Division) was holding the position of Manager Telegrapher at the General Office at Roodhouse—this was in compliance with Rule 21 that provided that, under the Agreement, seniority of employes in each of the Seniority Districts No. 1 and 2 applies to the "RO" office, Rood-

house. The positions in the General Office were not confined to either Seniority District.

It was called to the attention of the Organization by Carrier that due to the decrease in business at Roodhouse, there was not enough work at Roodhouse to justify the continuance of both the Agent and Manager positions and that it was the intention of the Carrier to consolidate the work in an Agent-Telegrapher position. There was some discussion between the Carrier and the Organization as to whether the Agent-Telegrapher position should be bulletined only to employes holding seniority in District No. 1 or whether it should be bulletined to employes holding seniority in Seniority District No. 2 as well as those holding seniority in District No. 1. At first it was agreed that the position should be bulletined to those holding seniority in both districts, but ultimately the General Chairman who had been consulted previously advised the Carrier that the Organization was protesting the proposed action of the Carrier, that it was not proper to abolish the Manager-Telegrapher position at "RO" Roodhouse and assign the work of that office to the Agent position in another Seniority District even though covered by the same Agreement.

We start with the premise that there had been a decrease in Carrier's business at Roodhouse that necessitated a change in Carrier's work assignment and a reduction of the force at Roodhouse. (There is no denial in the Record by the Organization that there had been a decrease in Carrier's business at Roodhouse.) If the creation of the Agent-Telegrapher position were to be regarded as a consolidation of work at the "RO" General Office, there could be no question of seniority, as it is conceded that J. W. Farrell was the senior qualified employe available.

In Rule 2 (c) and (d) of the Agreement it is recognized that there are occasions when the position of Agent is changed to that of Agent-Telegrapher and that the incumbent of the position prior to the change may not be qualified as a telegraph operator. The Carrier did not abolish the position at Roodhouse. It merely required that the Agent be a telegraph operator which is in accordance with the Agreement. If Claimant Wilkinson had been a telegraph operator he could have claimed the position immediately but he, not being qualified to hold the position of Agent-Telegrapher, exercised his displacement rights on another employe in District No. 1. The Agent-Telegrapher position was then bulletined to employes holding seniority in Districts Nos. 1 and 2. The Agent-Telegrapher position was assigned to Farrell, holding seniority in District No. 2. In progressing the claim of the Petitioner on the property, the General Chairman in his final communication stated as follows:

"The positions that were in "RO" office was not in question; it is the Agent's position at Roodhouse, Illinois, which is located on the Eastern Division and no one but the Eastern Employees can bid on this position."

There can be no question but that it is well settled that in discontinuing a position the Carrier is not permitted to assign the work even to those covered by the Agreement if they had seniority rights exclusively in another Seniority District. This Board has consistently held that positions within a specified Seniority District must be reserved for those holding seniority rights therein. However, that proposal has not been presented in the Statement of Claim in the instant case. Petitioner at one place in the submission has said that

"J. W. Farrell had acquired the position by virtue of his seniority, in accordance with the governing rules, and is entitled to it"

and no claim has been presented by the Petitioner in behalf of the senior qualified employe holding seniority in District No. 1.

Furthermore, the contemplated change in positions was known to the Organization by virtue of the information given them by the Carrier and during the progress of the claim on the property Carrier indicated that in order to comply with the demands of the Organization it was willing to fill the position of Agent-Telegrapher with any qualified employe holding seniority in District No. 1 who was named by the Petitioner, but there was no response to this suggestion.

For the foregoing reasons we cannot find that the Carrier abolished the position of Agent at Roodhouse, Illinois, nor that the work of the position was transferred outside the Seniority District. Secondly, as C. T. Wilkinson, Claimant, could not qualify for the position of Agent-Telegrapher and exercised his right of replacement, he is not, then, a proper Claimant as he has not been damaged and has lost no right of seniority. Since there was no violation of the Agreement as alleged in Parts 1 and 2 of the Statement of Claim then Part 3 must fall and the claim should be denied in its entirety. Moreover, this Division has consistently dismissed claims of unnamed and unidentified Claimants.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.