

Award No. 12423
Docket No. TE-10134

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the terms of the Agreement when it failed to assign E. W. Slayton, on June 4 to 8, inclusive; June 11 to 15, inclusive; June 18 to 22, inclusive; June 25 to 29, 1956, inclusive, at Saxe, Virginia, and on July 9 to 13, inclusive; July 16 to 20, inclusive; July 23 to 27, 1956, inclusive, at Chase City, Virginia.

2. Carrier shall now compensate E. W. Slayton for a day's pay of eight (8) hours for each date enumerated in paragraph 1, at the proper rate of pay.

3. Carrier violated the Telegraphers' Agreement when it caused, required or permitted one G. T. Faucette, Agent-Telegrapher Trainee, to work the agency position at Clarksville, Virginia, from August 1 to 3 and 6 to 10, 1956, inclusive, the Chase City, Virginia Clerk-Telegrapher's position August 13 to 17 and 20 to 31, 1956, inclusive, and the Quinton, Virginia Agency position August 27 to 31 and September 3 to 7, 1956, inclusive, when E. W. Slayton, Extra Board Agent, was not called to perform this work or notified it was available.

4. Carrier shall compensate E. W. Slayton, Extra Board Agent, Ringgold, Virginia, for sixty-four (64) hours at Clarksville, Virginia, at the rate of \$1.98 per hour, eight (8) hours at Chase City, Virginia, at the rate of \$1.975 per hour, and eight (8) hours at Quinton, Virginia, at the rate of \$1.915 per hour — total \$437.92.

EMPLOYEES' STATEMENT OF FACTS: Mr. E. W. Slayton is a telegrapher on the Richmond Division. He has a seniority date of September 8, 1942 on the list of agents and operators on the Richmond Division. Mr. E. W. Slayton was regular assigned agent at Ringgold, Virginia until November 3, 1950. On that date he was displaced by Mr. Q. B. Carter. Mr. Slayton is not qualified as a Morse operator.

rights, such rights will date from the date of original entry into service unless otherwise provided in existing agreements." (Emphasis ours.)

While Mr. Faucette had established seniority, it was entirely proper, under the Vacation Agreement, Article 12 (c) in particular, that he be used to perform vacation relief work, even though he may not have established seniority.

Thus the evidence is crystal clear that there has not been any violation of the effective Telegraphers' Agreement as alleged by the ORT, and that the absurd claim which it here attempts to assert is, in fact, without any basis whatever.

In this connection, in the Labor-Management Relations Act of 1947, commonly known as the Taft-Hartley Act, it was made an unfair labor practice for a labor organization or its agents "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed." (Section 8 (b) (6).)

Also, paragraph (a) (3) of Section 506 of Title V of the Communications Act of 1934, as amended, makes it unlawful "to pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee."

While technically these two laws do not apply in the railroad industry, nevertheless, their express provisions are particularly significant in the instant case because the ORT is here attempting to cause the Carrier to pay or deliver or agree to pay or deliver money, in the nature of an exaction, for services which were not performed and which, in fact, could not have been performed by the person which the ORT here demands be paid.

Claim being without any basis and unsupported by the agreement in evidence, in fact an absurdity, the Board cannot do other than make a denial award.

OPINION OF BOARD: The Organization claims that the Carrier violated the parties' Agreement when it failed to assign E. W. Slayton to fill positions temporarily while other employees were absent on vacation, as set out in detail in the Statement of Claim.

The claim is based on a number of rules, but principally upon Rule 21 (b), which provides that:

"Temporary vacancies of less than thirty (30) days will be assigned to the senior available qualified extra employee."

The Carrier defends on a number of grounds, one of which is that Slayton was neither available nor qualified to perform the work in question.

This Board has long adhered to the principle that the Petitioner, in order to establish a valid claim, must come forward with evidence of probative value to prove that its contentions are sound and in accord with the facts.

Here, the Organization contended that Rule 21(b) required the use of Slayton. The Carrier denied it. Thus, the Organization became obliged to prove that Slayton was in fact the "senior available qualified extra employe." This it has failed to do.

It must, therefore, be decided that the Organization has failed to establish its primary ground for grievance. Accordingly, the claim will be denied without considering other questions suggested by the parties' further arguments.

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 Employees involved in this dispute are respectively Carrier and Employees 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 23rd day of April 1964.