

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE GULF, COLORADO & SANTA FE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado & Santa Fe Railway that:

1. The Carrier violated the Agreement between the parties when, on July 13, 1958, it failed to bulletin the temporary vacancy on the 8:00 A.M. to 4:00 P.M. Manager-Wire Chief position at Galveston, Texas, refusing to give Mr. R. R. Milling, Sr., the senior qualified employe in point of Class 1 seniority desiring the position an opportunity to file application for the temporary vacancy, thereby failing to recognize the seniority rights of Mr. R. R. Milling, Sr., and assigned Mr. C. W. Conley, a junior employe in point of Class 1 seniority, to the temporary vacancy on the Manager-Wire Chief position at Galveston, Texas; and further violated the Agreement when it failed to bulletin the temporary vacancy on the 3:30 P.M. to 11:30 P.M. Night Wire Chief position at Galveston, Texas, refusing to give Mr. J. J. LeBeouf, senior employe in point of Class 1 seniority desiring the position, an opportunity to file application for the temporary vacancy, thereby failing to recognize the seniority rights of Mr. J. J. LeBeouf; and

2. The Carrier shall be required to pay Mr. R. R. Milling, Sr., the difference between the rate of pay of the Night Wire Chief position and the rate of pay of the Manager-Wire Chief position, plus the overtime rate for each hour worked outside the assigned hours of the Manager-Wire Chief position at Galveston, Texas, from July 13, 1958, to August 23, 1958, inclusive; and

3. The Carrier shall be required to pay Mr. C. W. Conley 8 hours at the overtime rate for work performed each Saturday and 8 hours at the pro rata rate for each day held off his regular Day Wire Chief position at Temple, Texas, plus actual expenses incurred when assigned to the Manager-Wire Chief position at Galveston, Texas, from July 13, 1958, to August 23, 1958; and

the Late Night Wire Chief position from 11:30 P.M. to 7:30 A.M. each Tuesday and Wednesday. Mr. LeBeouf protected his regular assignment during the period involved in the claim and the Board will also recognize that Part 4 of the Employees' claim also constitutes duplicate or pyramided payments in behalf of Mr. LeBeouf, and should not be allowed.

In conclusion, the Carrier respectfully asserts that the Employees' claim in the instant dispute is entirely without support under any rule in the current Telegraphers' Agreement, and should be denied for the reasons heretofore expressed.

OPINION OF BOARD: The regular incumbent of the position Manager, Wire Chief, Galveston, Texas, had been ill on occasions previous to the current incident, necessitating several leaves of absence. On or about April 8, 1958, he requested a leave of absence, extending from April 14, 1958, to July 12, 1958. The Carrier granted a leave of absence from April 14, 1958, to July 31, 1958.

There is some dispute in the record to the effect that the leave was granted beyond that which the incumbent requested, but the Carrier contends that the additional time was granted only after consultation with the incumbent and the incumbent's physician. We feel that under the circumstances of this case, since the incumbent never did return to work, but, indeed, had his leave of absence, because of the same illness, extended to October 15, 1959, finally culminating in a disability retirement, the obvious variance between the incumbent's original request for leave of absence from April 14 to July 12, 1958, and the granting of the leave to July 31, 1958, is purely academic, and is not determinative of the issues in the instant case.

There is reliance by both opposing factions on Sections 7-c-1 and Section 10(a) of Article XXI of the basic agreement. It is unquestioned that during the time involved, the vacancy created, for the purposes of this case, was temporary, rather than permanent, and, further, that it extended beyond 90 days. Article 10(a) prescribes that such a vacancy, when known to be in excess of 90 days, will be bulletined and filled in the manner provided in Section 7-c-1 of Article XXI. This latter section provides that positions of Manager Wire Chief at Newton, La Junta, Amarillo, Galveston and Winslow, will be filled by selection by the Company of any employee holding Class 1 seniority on the Relay Division on which located; other positions in Class 1 will be assigned to (1) the senior qualified applicant in point of Class 1 seniority, and (2) the senior qualified applicant in point of Class 2 seniority.

It can be readily seen that both sections appear to be repugnant in certain phrases one to the other, that is, that the position on the one hand will be bulletined, and on the other hand, the same position will be filled by the selection of the Carrier. The Carrier maintains that it is empowered to select the Manager, Wire Chief at Galveston, in accord with Section 7-c-1, whereas the Organization contends that such a position should have been bulletined when it became known that the vacancy was to extend beyond 90 days, to wit, on July 13, 1958. The Organization further contends that Section 7-c-1 refers only to permanent vacancies, that, therefore, the vacancy should have been bulletined, which would have set in motion a chain reaction justifying the claims now before us.

We do not agree with the distinction made by the petitioners between permanent and temporary vacancies. They would have us adopt the theory

that the last sentence of Section 10 (a) applies only to the last portion of 7-c-1, and not to the first portion. A perfunctory reading of these sections might lead one to agree with this interpretation on the basis that there is no point in bulletining a position which is one designated for selection by the Management. One appears to be totally incompatible with the other. However, if we were to follow the petitioner's argument to the effect that the first portion of Section 7-c-1 applies only to permanent vacancies, and not to temporary, we find ourselves faced with the very same predicament of selection versus bulletining. We find Section 7-c-1 stating that "successful applicants for bulletined positions shall be determined and assigned in the following order of precedence:

Section 7-c-1 then follows.

Thus, it becomes apparent that if we were to pursue petitioner's reasoning to its logical conclusion, the Carrier, in contravention of the plain meaning of 7-c-1, would be deprived of selecting Wire Chiefs at the five specifically designated places when permanent vacancies occurred. We think that the intent and meaning of these sections are clear. Obviously, there are other Wire Chief positions, other than those so specified in 7-c-1, which would be filled in accordance with the Seniority System, and not by selection of the Management. Both parties signed this agreement and made special reference to five positions, one of which is the subject of this dispute, and all of which were to be filled by selection of the Carrier. There is no distinction made between temporary and permanent vacancies and, indeed, we have, in our judgment, demonstrated the spaciousness of this argument. In conclusion, suffice it to say that we would have to ignore the plain meaning of the two aforementioned sections if we were to sustain these claims. Pure contract construction, in the absence of custom, practice or tradition to the contrary, or, indeed, of any prior awards interpreting the pertinent sections of this agreement, impels us to deny the claims.

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;

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 6th day of August 1964.