

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Ann Arbor Railroad Company, that:

1. Carrier violated the parties' Agreement when it used junior extra Telegrapher R. E. Daywalt to fill a tag-end rest day vacancy on the third shift Telegrapher-Leverman's position at Hallett, Michigan, on April 6, 13 and 20, 1960, at a time when senior extra Telegrapher T. G. Sage was idle, available, and qualified and willing to perform the work.

2. Carrier shall, because of the violation set out in part 1 hereof, compensate extra Telegrapher T. G. Sage, a day's pay at the rate of the third shift Telegrapher-Leverman's position at Hallett for each of the three (3) days on which he was deprived of work by reason of Carrier's violative act.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, and as otherwise amended.

T. G. Sage, hereinafter referred to as claimant, entered Carrier's service on July 9, 1956, and pursuant to the provisions of Rule 23 of the parties' Agreement acquired a standing on the seniority roster as of that date over the "Ann Arbor Railroad from Toledo to Frankfort, both inclusive."

R. E. Daywalt, hereinafter referred to as the "junior employee" entered Carrier's service on October 11, 1958, and in line with the provisions of Rule 23 he, too, acquired a standing on the seniority roster as of that date over the "Ann Arbor Railroad from Toledo to Frankfort, both inclusive." His established headquarter station is at Toledo, Ohio.

In the exercise of seniority as acquired under Rule 23 the claimant in accordance with the provision of Rule 24 (Filling Positions) became the regularly assigned occupant of a Telegrapher's position at Boat Landing, Frankfort, Michigan. He held this position until displaced therefrom by the occupant of the Agent-Telegrapher's position at Beulah, Michigan, an employee holding superior seniority rights, following which he reverted to the extra list.

ity rights, and any privileges resulting from length of service, apart from those created by contract or agreement, were the result of acts of grace of the Carrier."

Seniority rights of employes covered by the telegraphers' agreement are limited to those rights expressly set forth therein. This Division in its Award No. 4439 held:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' Agreement as they are written. It is not our privilege or right to add thereto, and when a rule specifically lists the situations to which applicable it thereby excludes all those not included therein." (Emphasis ours.)

The burden of proof of violation of the telegraphers' agreement as contended in the Committee's ex parte Statement of Claim is upon the petitioner and the petitioner has not cited any rules in the telegraphers' agreement which required the Carrier to use the claimant to perform "tag-end" relief work on the date in question.

In the absence of a restriction imposed by law or granted to the employes by agreement through the processes of collective bargaining, an employer has the right to manage its business and direct the working force as the discretion of its officers may indicate will best serve its needs, and it is the function of good management to arrange the work, within the limitations of the collective agreement, in the interests of economy.

Therefore, as the telegraphers' agreement does not grant senior extra telegraphers first call for "tag-end" relief work, and as the telegraphers' agreement provides that the Carrier is not required to pay "for deadheading" to employes who perform "relief service" on the rest days of the employes whom they are relieving, and further provides that "Turnovers between regular and relief employes shall be without expense to the Carrier, "Rule 9, Section 1 (e), it was not only within the scope of good management to use an extra telegrapher both qualified and on hand at Toledo, to perform "tag-end" relief work at Hallett Tower at Toledo, and to thus eliminate the expense involved in having an extra telegrapher deadhead from Beulah, where claimant voluntarily maintained his headquarters, to Toledo, a distance of about 279 miles, and a similar distance on the return trip from Toledo to Beulah in connection with filling the three "tag-end" relief days in question but such use of the junior employe fell within the latitude retained by the Carrier under the terms of the telegraphers' agreement.

The claim should be dismissed and if not dismissed, denied.

(Exhibits not reproduced).

OPINION OF BOARD: Except for the dates involved we have the same identical parties, including Claimant, and the same identical issues presented here as in Award No. 13227, recently adopted by this Board, and controlling here.

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 Employes involved in this dispute are respec-

to the Chief Dispatcher. This does not apply to vacancies where auditor's check is necessary.

(l) When reducing forces seniority shall govern. When forces are increased, employes shall be returned to service in order of their seniority. Employes desiring to avail themselves of the provisions of this paragraph must file their address with the Chief Dispatcher at the time of reduction, and advise promptly of any change in address. Employes failing to file their address with the Chief Dispatcher at the time of reduction, or advise promptly of any change in address, or to return to the service within seven (7) days after being notified by mail or telegram sent to their last known address or give satisfactory reason for not doing so will be considered out of the service.

(m) An employe retired under the disability provisions of the Railroad Retirement Act will retain seniority until he attains the age of sixty-five (65) years, but position vacated by him when retired will be bulletined as a permanent vacancy. Should he recover sufficiently to resume service prior to attaining the age of sixty-five (65) years, he will take his place on the extra list and may exercise displacement rights in accordance with Paragraph (g) of this rule."

Seniority rights of employes are confined to those which exist only by reason of an agreement between them and the Carrier.

Under the telegraphers' agreement in effect on this property September 1, 1955, the employes covered thereby are entitled only to the seniority rights which are therein accorded them.

Neither Rule 23 nor any other rule in the telegraphers' agreement in effect on this property provides that this Carrier is required to use senior extra telegraphers to perform "tag-end" relief work.

The fifth paragraph of Rule 9, Section 1 (e) (quoted on page 2 of this submission) relating to the performance of necessary work on rest days of employes regularly assigned on positions does not stipulate that work on rest days not covered by regular relief assignments ("tag-end" relief work) will be performed by the senior qualified extra man or men, the rule simply states that such work "may be performed by qualified extra men, if available."

Paragraph (k) of Rule 23 (Seniority, Rights and Promotion) states:

"(k) A junior extra employe assigned to a temporary vacancy will hold same for five (5) days, after which he may be displaced by a senior idle extra employe, who must make proper application to the Chief Dispatcher. This does not apply to vacancies where auditor's check is necessary."

which contemplates clearly that the senior extra telegrapher will not necessarily be used in filling temporary vacancies. However, this is the only provision in the rules under which an extra telegrapher may use his seniority to obtain a temporary vacancy of less than thirty (30) days duration.

In this Division's Award No. 1571, decided without a Referee, it held:

"Seniority rights of employes of a Carrier exist only by virtue of a contract or agreement between them and the Carrier. In the absence of such contract or agreement such employes have no senior-

tively 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 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 January 1965.