

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(Formerly The Order of Railroad Telegraphers)**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company) that:

1. The Carrier violated the terms of the Telegraphers' Agreement when it failed to assign W. D. Lander to the position of Agent at Bryan, Texas.
2. Carrier shall now be required to assign W. D. Lander to the position of Agent at Bryan, Texas; and
3. Pay W. D. Lander the difference between what he has earned in other capacities and the rate at Bryan from June 16, 1960 until he is placed on the Bryan Agency.

EMPLOYES' STATEMENT OF FACTS: Under date of June 1, 1960, the following bulletin for vacant positions was issued pursuant to Rule 19 of the Current agreement between the parties:

(Reproduced in part)

"The Order of Railroad Telegraphers
Southern Pacific—Atlantic System
Division No. 72
June 1, 1960

"All Concerned:

Vacancies open for bids this month:

	*	*	*
Bryan	_____		*Agent
	*	*	*

"Employees filing applications for above vacancies should send a

the man claiming the job did not bid on it during the first fifteen days and we could not in any right have considered him as an applicant. We complied exactly with the rule and the applicant was working and had an opportunity to bid on the job but did not do so. Further, he handles the bulletins himself, as he is the Local Chairman. Apparently after the bids were completed, he turned in a bid from Chicago, Illinois with no chance in the bid reaching the proper officer of the Carrier by the time specified in the agreement.

Carrier respectfully requests that the Board promptly deny this claim as it has no basis whatsoever for consideration.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 19 (B) of the Agreement provides in part:

"The Local Chairman of each division will be notified by the Company on the first day of each month when positions are created, or vacancies occur on the division where located and the Local Chairman will mail each station copy of bulletin and employees may file claim for same within fifteen (15) days from such notification. At the expiration of such period, permanent assignment will be made. Bulletins will show assignments, and when new positions are created will state the rate of compensation."

The following bulletin was issued:

"Bryan

*Agent

"Employees filing applications for above vacancies should send a copy of application to Supt. and Dist. Chairman having jurisdiction over the territory where vacancy exists and to Supt. and District Chairman where presently employed and to General Chairman. Applications should bear personal signature of applicants and no type-written signatures will be accepted. This bulletin expires midnight June 15, 1960."

No contention was made on the property that the closing date was other than June 15, 1960, at 12:00 midnight. The application was not received by the carrier until after midnight June 15, 1960. The employees contend that the application of the claimant was submitted by the closing time of June 15, 1960, at 12:00 midnight, for the reason that the application was postmarked before midnight, June 15, 1960. The employees also contend that it had been the practice on the property to consider applications postmarked before the closing time, that there is an ambiguity and that past practice controls. The carrier contends that the application must have been received by the carrier before midnight, June 15, 1960.

We have reviewed Awards 7110 (Larkin); 10801 (Kramer) and 11505 (Dorsey) of the Third Division and Award 14697 of the First Division, which we believe to be helpful, and also, 39 Am. Jur. 299; "file" in Vol. 16A of Words and Phrases; the Restatement of the Law of Contracts; and Williston on Contracts. From this review we conclude:

(1) "File" requires delivery to the Carrier.

(2) Practice on the property would only be controlling if there was an ambiguity.

(3) As "File" requires delivery to the Carrier, there is no ambiguity.

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 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 24th day of June, 1965.