

Award No. 14108
Docket No. TE-13984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)
TENNESSEE CENTRAL RAILWAY COMPANY

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

1. Carrier violated the Agreement between the parties when:

(a) It failed and refused to use R. C. Vaughn for extra work on the position of agent-operator at Crab Orchard, Tennessee, commencing September 27, 1961.

(b) It failed and refused to use R. C. Vaughn for extra work on the first shift operator-clerk position at Shops (Nashville), Tennessee, commencing on October 2, 1961.

(c) It failed and refused to assign R. C. Vaughn to the position of agent-operator at Crab Orchard, Tennessee, but instead assigned an employee junior to Mr. Vaughn by its Bulletin No. 8, dated October 24, 1961.

2. Carrier shall be required to compensate R. C. Vaughn for all wages lost (eight hours' pay per day, Monday through Friday, plus and overtime or calls, beginning September 27, 1961) because of being denied the above work opportunities which are due him by virtue of seniority rights.

3. Carrier shall be required to assign R. C. Vaughn to the position of agent-operator at Crab Orchard, Tennessee.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1924, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant R. C. Vaughn, with a seniority date of December 30, 1954, is covered by the Agreement and thus is entitled to all its benefits in accordance with his seniority rights.

Carrier respectfully submits that the claim of Employees that a violation of the agreement occurred in the course of the circumstances in this case is utterly devoid of support, and, for the reasons given herein, prays that the claim be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The record contains evidence, in the form of a medical report by the Carrier's chief surgeon, that at all times relevant to the dispute the Claimant was physically able to perform telegraphic work, but was not able to handle a job requiring heavy lifting or extensive walking.

There is also evidence, unrefuted by the Organization, that the position of agent-operator at Crab Orchard, a one-man station, included duties requiring considerable walking and the probability of at least occasional heavy lifting.

Based on this evidence, it is our judgment that the Carrier was justified in declining the Claimant's bid for the position at Crab Orchard, and in refusing to assign him to the extra work at that station.

The record contains nothing, however, to show that either walking or lifting was required on the position of first shift operator-clerk at Shops. And, since it is apparent that the Claimant could have been used to perform the work of this position while a junior employee worked it from October 2, 1961, to and including October 21, 1961, the claim in favor of Mr. Vaughn should be sustained to that extent.

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 violated only to the extent indicated in the Opinion.

AWARD

Claim for a day's pay of eight hours at the rate applicable to the position of operator-clerk at Shops sustained for each work day October 2 to 21, 1961, inclusive; in all other respects the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1966.