



Award No. 16125  
Docket No. TE-14790

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Daniel House, 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, that:

1. The Carrier violated the provisions of the Agreement between the Tennessee Central Railway Company and The Order of Railroad Telegraphers, when on May 15, 1959, it failed and/or declined to assign Mr. B. C. Matheney, the senior applicant, to the position of Agent-Operator at Emory Gap, Tennessee and instead assigned Mr. C. J. Harris to this position. By letter of April 4, 1960, Mr. Matheney again requested that he be placed on the position of Agent-Operator at Emory Gap.

2. That Mr. B. C. Matheney, who was improperly denied assignment to the Agent-Operator position at Emory Gap, shall be assigned thereto and placed thereon; and that the Carrier shall compensate Mr. Matheney in full for eight hours each day, Monday through Saturday of each week, beginning April 5, 1960, and continuing thereafter so long as Mr. Matheney is denied assignment to the position of Agent-Operator at Emory Gap. Rate of pay of the position of Agent-Operator at Emory Gap, effective November 1, 1959, is \$528.18 per month.

3. That Mr. B. C. Matheney shall be compensated for April 5, 1960, and for each day thereafter he is denied assignment or work, whether at Emory Gap or elsewhere, to which his proper seniority date of January 8, 1957, entitles him.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an Agreement between the Tennessee Central Railway Company, hereinafter referred to as Carrier, and its employees in the Telegraphers class as represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization or employees, effective May 1, 1924, and as otherwise amended. Copies of said Agreement are, as required by law, assumed to be on file with this Board and are, by this reference, made a part hereof.

(m) An employe who is absent when a position is bulletined and assignment made, may, within ten (10) days after his return, assert his seniority and displace the employe assigned to such position. The employe displaced will be permitted to return to the last position he held, assert his seniority rights or go on extra list. Any other employe displaced account such change will enjoy the same privilege.

(n) Employes who have been in the service for two years or more, may be given leave-of-absence for ninety (90) days if relief men are available, and at the end of that time, or before, if desired, they may resume their employment without losing their seniority. No more than one such leave (other than short vacations) shall be given the same employe in any consecutive period of two years, except in case of sickness (himself or immediate family) and to the General Chairman, and General Secretary-Treasurer.

(o) When employes working on the extra list do not make an average of twenty (20) days a month for a period of two consecutive months, the extra list shall, upon application of the General Chairman, be reduced until an average of twenty (20) days a month can be made.

(p) Employes accepting transfer to other classes of service than covered by this agreement, except to official positions, shall forfeit their seniority after having filled such positions more than six months. An employe covered by this agreement accepting promotion to an official position will, upon returning to the classes of service covered by this agreement, be allowed to assert his seniority rights in accordance with paragraph (h) of this rule."

Bulletin dated May 5, 1959 advertising vacancy of Agent-Operator at Emory Gap is attached hereto designated Carrier's Exhibit No. 1.

Bulletin dated May 15, 1959 assigning C. J. Harris to the aforesaid vacancy is attached marked Carrier's Exhibit No. 2.

Correspondence showing the handling of this dispute on the property is attached marked Carrier's Exhibits Nos. 3 to 12, inclusive.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant B. C. Matheney, started to work as an Operator-Clerk by filling a temporary vacancy in Cookeville starting on January 8, 1957. On March 5, 1957, he applied for a bulletined position as Operator-Clerk at Cookeville. On March 21, 1957, a junior employe, Bowles, was assigned to the bulletined position, Carrier saying that it did not assign Claimant because he was not qualified. In a letter to Carrier, dated March 23, 1957, General Chairman Wiggerman asserted that the assignment should be given to Matheney because of his superior seniority and that the seniority standing of Matheney, Bowles and Harris, another employe, should be:

"Bernard Matheney .....January 8, 1957  
H. W. Bowles .....February 11, 1957  
C. J. Harris .....March 4, 1957"

On April 27, 1957, the Chief Dispatcher found that Claimant was then adequately qualified and authorized the addition of Claimant's name to the seniority roster with a seniority date of April 27, 1957. On April 30, 1957, Organization filed a formal claim protesting the failure to assign Claimant to the Cookeville Operator-Clerk position and asserting his seniority date was January 8, 1957. Carrier denied that claim on the ground that Claimant had not been qualified on March 21st. On September 14, 1957, after receiving a seniority list from Carrier showing Claimant with a seniority date of April 27, 1957, Organization filed another claim asking that the date be corrected to January 8, 1957. On December 13, 1963, the two claims were decided by us in our Award No. 11974 in which we found that Organization had not proved that Claimant was qualified for the position on March 21st and therefore denied the claim that Carrier had improperly assigned a junior employee; and in which we sustained Organization's claim that Claimant's seniority date as a Telegrapher be listed as January 8, 1957.

While the disputes about Claimant's right to the Cookeville position and his correct seniority date were still unresolved, on May 5, 1959, Carrier advertised a vacancy in the position of Agent-Operator at Emory Gap. On May 8, 1959, Claimant bid for it. On May 18, 1959, Carrier announced by bulletin that C. J. Harris was assigned the position at Emory Gap, and he thereafter filled the position. No claim was then filed in behalf of Claimant. On April 4, 1960, Claimant wrote the Chief Dispatcher requesting that he be permitted to displace Harris on the position and restating that he claimed January 8, 1957 as his correct seniority date. Carrier replied, denying that Claimant had any right to displace Harris. Whereupon, on May 31, 1960, the here-involved claim was filed, asking pay for Claimant beginning April 5, 1960, and until he is properly assigned as claimed by Organization on the basis of January 8, 1957 seniority date.

Carrier contends, among other things, that the Claim is barred from consideration on its merits because it was filed late under the Time Limit Rule, having been filed more than a year after the allegedly improper assignment.

Organization meets this contention by arguing that under the circumstances of the case, the Claim is a continuing claim within the meaning of paragraph 3 of Article V of the August 21, 1954 Agreement. Organization also argues that "if justice is to prevail in this case" the question must be answered as to "Carrier's liabilities with respect to wage losses incurred by Claimant as a direct result of Carrier's failure at the very outset to properly apply Rule 17."

It would be an unjust and, we believe, an unintended application of the Agreement if we were to apply it in such a way that Organization could not in any way effectively raise the question of Carrier's liability for the effects of that violation pending determination of the question of whether Carrier had violated the Agreement in assigning a wrong seniority date. However, avoidance of such an application of the Agreement does not make it necessary that we alter our normal application of the Time Limit Rule. The liability of Carrier for losses suffered by Claimant as a result of Carrier's assignment of the wrong seniority date to Claimant was properly and finally asserted as a claimed remedy for that effect of the violation when Organization filed its claims in 1957; the claim relating to each specific improper assignment resulting from the improper seniority date is a complaint about a specific event which occurs just once on the date of each such improper assignment, and

each claim could, without prejudice to Organization's rights, be made within the proper time after the event.

Paragraph 1 of the Claim now before us alleges that Carrier "violated the provisions of the Agreement . . . when on May 15, 1959, it failed and/or declined to assign Mr. B. C. Matheney . . . to the position . . . at Emory Gap . . ." (underlining supplied): this is a claim that the event which took place on May 15, 1959, violated the Agreement, and is thus not a continuing claim within the meaning of the Time Limit Rule; it was filed belatedly under the terms of the Time Limit Rule. We shall therefore deny paragraph 1 of the Claim without considering it on its merits.

Paragraph 2 of the Claim now before us may be read to assert either a claim based on the improper assignment on May 15, 1959, asserted in paragraph 1 or on an alleged improper refusal to assign Claimant to the position in question on April 5, 1960, or on both; to the extent that it intends to rely on an alleged violation in Carrier's refusal to grant the assignment requested in Claimant's letter of April 4, 1960, we cannot say that this portion of the Claim was filed too late for consideration on the merits. But, considering that portion of the Claim separately, as we must, having found that the claim regarding the Emory Gap position is not a continuing claim, we find nothing in the Agreement which would require that Claimant be permitted to displace even a junior incumbent in the position. Thus paragraph 2 of the Claim, to the extent that it was timely filed, fails on the merits.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 Paragraph 1 and part of Paragraph 2 of the Claim were untimely filed.

That Carrier did not violate the Agreement regarding that portion of the Claim which may be considered to have been timely filed.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1968.

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