



**Award No. 16919**  
**Docket No. TE-16129**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John J. McGovern, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated Rule 20(A) of the Telegraphers' Agreement and Memorandum of Agreement dated December 1, 1959 in lieu of Rule 37 of the Agreement when on August 27, 1964 it unilaterally and capriciously failed to fill the star agent-telegrapher position at Freeport, Texas in compliance with said Agreement and further continues to ignore the principles of seniority, ability and qualifications of the only employe selected to fill such agency.

2. Carrier shall compensate Telegrapher P. S. Fulkerson the difference in pay between the position he is working at Odem, Texas (a five day assignment) and that of the star agent-telegrapher position at Freeport, Texas (a six day assignment), beginning August 27, 1964 and continuing thereafter as long as Mr. Fulkerson is withheld from being assigned to the Freeport Agency.

3. Carrier shall pay six percent per annum on all sums due and withheld as a result of this violative action.

**EMPLOYEES' STATEMENT OF FACTS:** Freeport, Texas is located on the Kingsville Division of Missouri Pacific Railroad, Gulf Division, 60.6 miles southwest of Houston, Texas. There are two positions under the Agreement at this point, that of star agent and telegraph clerk. These positions were assigned to work between the hours of 8 A. M. and 4 P. M. with the star agent position assigned Sunday as rest day. On August 7, 1963, the Carrier acting unilaterally abolished the telegrapher-clerk position, transferred the clerical work to the clerks and then reclassified the agency to that of star agent-telegrapher. The regular incumbent of the star agent position was R. S. Combs. However, unable to perform all the duties involved in this new position Mr. Combs secured a leave of absence. Telegrapher J. A. Slay acquired the star agency telegrapher position on a temporary basis.

On or about July 1, 1964, Agent Slay resigned from the service and Mr. Combs retired on an annuity. Under date of July 29, 1964, Superintendent

the agency position on the Houston Belt & Terminal Railroad Company at Houston for many years. There was never any dispute concerning the qualifications of Mr. Carey for the Freeport agency.

16. After waiting approximately 45 days for General Chairman Phillips to furnish additional names of employees he would recommend for the Freeport agency, which is not required by the Agreement of December 1, 1959, on February 22, 1965, the Carrier appointed Mr. A. J. Garey to the Freeport position.

17. On January 25, 1965, General Chairman Phillips addressed a letter to Superintendent A. K. McKeithan wherein he filed the instant claim in behalf of his Division Chairman, Mr. P. S. Fulkerson, beginning August 27, 1964, and continuing for as long as Mr. Fulkerson is withheld from the position of star agent-telegrapher at Freeport, Texas, notwithstanding the fact the claimant did not bid on the Freeport vacancy, and that the appointment of Mr. Garey was not in violation of any provision of the Agreement.

18. Superintendent McKeithan declined the claim in behalf of Mr. Fulkerson under date of February 10, 1965. General Chairman Phillips appealed the decision of Superintendent McKeithan to General Manager Smith under date of February 11, 1965, and under date of February 19, 1965, General Manager Smith declined the claim. General Chairman Phillips appealed the decision of General Manager Smith to the Director of Labor Relations under date of February 24, 1965, and the appeal was declined on March 10, 1965. The claim was discussed in conference in St. Louis on April 5, 1965, and under date of April 7, 1965, the Carrier's Director of Labor Relations again denied the claim.

19. The Carrier is attaching certain exchanges of correspondence in connection with this case, as follows:

		Exhibit
Memorandum of Agreement	12-1-59	A
General Chairman's letter	1-25-65	B
Superintendent's letter	2-10-65	C
General Chairman's letter	2-11-65	D
General Manager's letter	2-19-65	E
General Chairman's letter	2-24-65	F
Director of Labor Relations' letter	3-10-65	G
General Chairman's letter	3-18-65	H
Director of Labor Relations' letter	4-7-65	I
General Chairman's letter	4-20-65	J
Award No. 2, SBA No. 506		K

(Exhibits not reproduced.)

**OPINION OF BOARD:** The substantive claim as presented to this Board alleges a violation of Rule 20(A) of the Agreement and a Memorandum of Agreement, dated December 1, 1959 in lieu of Rule 37 of the Agreement when Carrier unilaterally and capriciously failed to fill the Star Agent-Telegrapher position at Freeport, Texas. It further alleges that Carrier continues to ignore the principles of seniority, ability and qualifications of the only employee selected to fill the agency.

The Claimant, upon whose behalf the matter is now before this Board, never submitted a bid for the position in question: It is true that he was recommended to the Carrier as being qualified for the position, but the record is devoid of any evidence that he, himself ever made proper application. Despite this, Carrier nevertheless ruled that he was not qualified for the job.

As we view this case, we need not consider whether Carrier's adjudication of Claimant's qualification was arbitrary and capricious, because before we would take this under consideration, Claimant must by positive action on his part, have submitted an application for the position. This is a requisite condition precedent to be established before we can consider his merit, ability, qualifications etc. Absent this condition, there is simply no case for the Petitioner.

There are a number of other questions raised by the Organization throughout this record, all of which are beyond the substance of the claim itself. Hence we need not, nor can we address ourselves to those issues.

We will dismiss the claim.

**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 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.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1969.