



Award Number 17926

Docket Number TE-17889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
UNION PACIFIC RAILROAD COMPANY—EASTERN DISTRICT**

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

1. Carrier violated the Agreement between the Union Pacific Railroad Company and Transportation-Communication Employees Union effective November 1, 1962 when it did not permit Miss Violet M. Radakovich to step up from her regular assigned position, First Trick Telegrapher-Clerk-Printer Operator-Leverman, to that of Manager-Telegrapher-Clerk-Printer Mechanic at the Rawlins, Wyoming Telegraph Office on April 15, 1967.
2. Carrier violated the Agreement between the Union Pacific Railroad Company and Transportation-Communication Employees Union effective November 1, 1962 when it refused to compensate Miss Violet M. Radakovich at the pro rata rate of Manager-Telegrapher-Clerk-Printer Mechanic on April 15, 1967.
3. Carrier shall compensate Miss Violet M. Radakovich at the pro rata rate of pay for 8 hours at \$3.2243, rate of Manager-Telegrapher-Clerk-Printer Mechanic. Total amount of claim \$25.79.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based upon various provisions of the collective bargaining agreement, effective November 1, 1962, as amended and supplemented, between the Transportation-Communication Employees Union and the Union Pacific Railroad Company (Eastern District). The claim was handled on the property in the usual manner up to and including a conference with the highest officer designated by the Carrier to handle such claims. It was discussed in conference on August 4, 1967.

The claim arose on April 15, 1967 when the regularly assigned incumbent of the Manager-Telegrapher-Clerk-Printer Mechanic's position at Rawlins, Wyoming laid off one day for personal reasons. The Claimant was not permitted to exercise her office seniority to step up on the temporary vacancy. Although maintaining that the Manager's position was blanked, Carrier admits that the Agent at Rawlins did perform work on the Manager's position.

that positions of managers, all office, and chief operators and printer mechanics Omaha 'U' office will be bulletined only in vent of vacancies in those positions.

"2. Employees holding office seniority will be assigned to bulletined positions or vacancies on their respective seniority lists, for which they apply, in accordance with office seniority standing and qualifications.

"3. In reduction of force or abolition of positions, seniority subject to qualifications will govern. Temporary positions will be discontinued before reduction is made in regular positions.

"4. Where two or more extra employees are working in a telegraph office at the same time, they will be accorded choice of extra assignments, of telegraphers or printer operators, subject to qualifications, in the order of their last entrance into the telegraph office.

"5. Extra telegraphers or printer operators will be returned to their respective extra boards in the reverse order in which they last entered the telegraph office.

"(j) Applications for positions in telegraph offices listed in this rule will be considered on basis of qualifications, subject to approval of Superintendent Communications. Where qualifications are sufficient, seniority will govern."

Because Miss Radakovich was not given the opportunity to step up to the M-T-PM position on Saturday, April 15, 1967, her rest day, claim was filed for eight hours pay at the pro rata rate.

The handling of this dispute on the property is set forth in the following letters between representatives of the Organization and representatives of the Carrier:

Carrier's Exhibit A:

Letter dated June 5, 1967 from General Chairman Goldsmith addressed to former Asst. to Vice President N. T. DeLong enclosing copy of claim as filed May 12, 1967 with S. D. Gatchell, Superintendent, Wyoming Division.

Carrier's Exhibit B:

Letter dated August 3, 1967 from Asst. to Vice President J. H. Kenny to General Chairman Goldsmith.

Carrier's Exhibit C:

Letter dated August 9, 1967 from Asst. to Vice President J. H. Kenny to General Chairman Goldsmith.

(Exhibits Not Reproduced)

OPINION OF BOARD: This claim arose on April 15, 1967 when the regularly assigned incumbent of the Manager-Telegrapher-Clerk-Printer Mechanic's position at Rawlins, Wyoming laid off one day for personal reasons.

The Employees have contended that Carrier was in violation of Rule 35(c) when Claimant was not allowed to move up on a one day vacancy.

The Carrier argues that the agent, who functioned as both the Ticket Agent and Freight Agent, did not perform any work outside the scope of his duties, nor did he perform work reserved exclusively to the position of Manager-Telegrapher Printer Mechanic. The position was blanked because the work

functions for that date were so minimal that it was Carrier's decision these work functions need not be performed that day. The only work which was performed was common to several positions.

The pertinent part of the Agreement is contained in Rule 35(c), which is as follows:

"Except as provided in paragraph (a) of this rule and when the regular assigned relief agent or relief leverman is not available, temporary vacancies may be filled by advancing the regular force in an office or station according to seniority and qualifications if they so desire.***"

This Board has discussed this paragraph in Award 16981 which involved the same parties as in the instant case.

"The Organization contends that the word "may" as contained in Rule 35(c) above, confers an option on the Employee only, to move up or not move up as he desires. The Organization contends that the Carrier has no discretion in the event the Employee desires to exercise the option to move up. It has been admitted by both sides that a relief Employee was available.

"The Carrier contends that the word "may" as contained in Rule 35(c) above confers an option on the Carrier to move the Employee up or not to move the Employee up as the Carrier so desires; that Rule 35 (c) is not a mandatory provision on either party; that if the word "will" had been used in place of the word "may" in Rule 35(c), neither the Employee or the Carrier would have had discretion. Carrier also contends that the relief man available was not qualified.

"It is the opinion of this Board that the word "may" is permissive to both the Carrier and the Employee. It is also the opinion of this Board that the "filling" of a vacancy is ordered by the Carrier and that the Carrier has the sole prerogative in "filling" a vacancy. In other words, the Carrier has an election or option under Rule 35(c) to move a man up to fill a temporary vacancy. If the Carrier exercises this election or option, then the Employee would have the option to move up or not to move up to fill the vacancy as he so desired. The vacation vacancy does not obligate or permit or make mandatory the moving up of an Employee. The word "may" is permissive in nature and absent provisions to the contrary, this word must be interpreted as being permissive to both parties signatory to the Agreement."

Upon consideration of the testimony presented, exhibits introduced and the above cited award, it is clear that the Carrier in the instant case has not violated the parties' Agreement.

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 was not violated.