

Award No. 17995
Docket No. TE-18468

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Great Northern Railway, that:

CLAIM NO. 1

Claim is hereby presented that the Carrier violated the terms of the Agreement when on March 4, 1968 it failed to place Telegrapher J. B. Spence on agency position at Burlington, Washington.

Carrier shall now compensate Telegrapher J. B. Spence, Burlington, Washington, eight hours at time and one half, less time already paid, for the ten day period March 4th through 8th and March 11th through 15th, 1968.

CLAIM NO. 2

Claim is hereby presented that Carrier violated the terms of the Agreement when on March 11, 1968, the vacancy as agent, Burlington, Washington was improperly removed from the vacancy bulletin.

Carrier shall compensate Mr. J. B. Spence, Burlington, Washington, eight hours at the time and one-half rate for each date beginning March 18, 1968, that he is held off the agency position at Burlington, Washington.

This is a continuing claim beginning March 18, 1968 and continues until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective September 1, 1949, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

and Burlington, and this could best be accomplished by simply having the present employees at the two stations move to the new location as rapidly as the work could be absorbed at that point. (See Carrier's Exhibit C-4.)

While the Organization's General Chairman initially concurred in such thinking, he subsequently developed the second thoughts reflected in his letter of April 12, 1968 (Carrier's Exhibit C-5), wherein he requests that only the forces at Mount Vernon should be permitted to move with their positions to the new location, and that the positions at Burlington be abolished and then rebulletined at the new station.

In subsequent discussions with the General Chairman, the Carrier continued in its effort to convince the Organization that the least disruptive procedure to all would be in treating the situation simply as a change in office location for all the employees involved at both Mount Vernon and Burlington when the new station of Mount Vernon-Burlington went into effect. The Carrier's only alternative absent such concurrence on the Organization's part was to abolish and rebulletin all the positions at the two former stations and the new joint agency, respectively, under the applicable rules (see Carrier's Exhibit C-6), and this was eventually done.

It was against this background of uncertainty as to procedures to be followed in effecting the joint agency and the necessity for avoiding a disruption of service to the shipping and traveling public that the Carrier's local officers decided to accept the penalty payment of time and one-half to the agent (R. F. Wans) at Burlington for the short period of time necessary to equip the new station building and effect an orderly business transition.

Claim No. 1 was initially filed March 28, 1968 by the District Chairman, contending that the Carrier violated the bulletin rule (see Rule 5-d, as amended, page 3, Exhibit 12). However, the substance of the claim flows to the temporary vacancy rule (Rule 6, see page 8, below), inasmuch as it seeks payment for the period March 4 through March 8 and March 11 through March 15. (See Carrier's Exhibit C-7.)

Claim No. 2 was first filed on March 18, 1968 by the District Chairman, seeking 8 hours at the time and one-half rate for "... each date beginning March 18, 1968, that he is held off the Agency position at Burlington, Washington." The District Chairman's claim letter quotes from the bulletin rule (Rule 5-d, as amended) and protests the cancellation of the supplementary bulletin described on page 3 of this submission (see Carrier's Exhibit C-8). The claim was initiated and progressed on the assumption that the claimant would have been the successful bidder on the position had the bulletin not been cancelled. The two claims were combined in subsequent handling on appeal. The parties were unable to resolve the dispute in correspondence and subsequent conferences on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute consists of two claims in favor of telegrapher J. B. Spence growing out of the manner in which Carrier dealt with a change in personnel at its Burlington, Washington station.

For many years two separate stations served the Burlington-Mount Vernon community. These stations were located about four miles apart, and each had an agent and other employees. Claimant Spence occupied a relief position at Burlington.

Carrier made arrangements to consolidate the two stations at a new location about midway between the two previously existing stations, and expected to effect the change about March 1, 1968. In anticipation of the change Agent R. G. Wans at Burlington bid for a vacancy at another station and was successful.

It is noted that the bulletin rules required Mr. Wans to be assigned to his new job not later than March 1, 1968, or be compensated at premium rate for work performed elsewhere. These rules also contemplate the prompt bulletining of vacancies resulting from actions such as Mr. Wans took here to bid in another job.

Another rule permits employes in an office to move up to temporary vacancies in that office.

Carrier, because of the impending changes at Burlington-Mount Vernon, did not permit Mr. Wans to go to his new job, but required him to stay at Burlington, paying him the premium rate. There was considerable confusion about the bulletining of the position at Burlington when Mr. Wans became the successful bidder on another job. But, it finally developed that Carrier did not intend to bulletin this job because it was to be merged into the new location facility very shortly.

Claimant Spence contended that such handling violated both the "bulletin" rules and the "move up" rule. Two claims were filed. The first asserted that because of the alleged violations Spence was deprived of his right to move up to the agent position for the two-week period March 4 to 15, excluding rest days; that he thus should be treated as being held off his rightful job for that period; and that he should be compensated at the premium rate.

The second claim asserted that since Carrier had failed to bulletin the vacancy created by Wans' bidding off the agent position he, Spence, should be considered as having a right to fill the position or be paid the premium rate.

"RULE 5 (e). PERMANENT APPOINTMENTS

Permanent appointments shall be made not later than twenty days, nor earlier than ten days from date of bulletin. Successful applicant shall be considered as assigned to the new position as of the date bulletin closes and shall be placed thereon not later than thirty days from the date of bulletin advertising such positions. If not so placed, they shall be compensated at time and one-half for each hour worked away from their assignment.

Local Chairman will be notified of all permanent appointments when made and a list of such appointments shall be published in the bulletin of the following month. Employes who obtain bulletin positions, and are compelled by incompetency, or other reasons, to relinquish such positions, shall be placed and remain on the extra list until vacancies to which their seniority entitle them occur, or are

created, but they shall not be eligible to return to their immediately preceding positions until they have been advertised a second time.

NOTE: A regular assigned employee bidding from position 'A' to position 'B' and subsequently gives up position 'B' and reverts to extra list shall not be permitted to bid back into position 'A' until it has been bulletined a second time."

"RULE 6. TEMPORARY CHANGES

(a) Employees will not be allowed to trade positions, except in cases of emergency, and then only with the permission of the proper officer of the Railroad, but not to exceed a period of thirty days.

Other than as provided in Rule 16-(c), upon request, other regular assigned employees in the same office, including regular assigned relief employees assigned to five days' relief work in the same office (see 'Note'), shall be permitted to move to other positions in the same office during a temporary vacancy, a temporary new position not subject to bulletin, or a newly created permanent position pending bulletin, according to Rule 5-(a).

NOTE: After regular assigned employees have moved up or had opportunity to move up under this rule, regular assigned relief employees not assigned to five days relief work in the same office shall be permitted to move up, according to Rule 5-(a), and remaining temporary vacancies in the office will be filled from the extra list as per Rule 6-(b)."

We have carefully considered Rules 5 and 6, referred to herein as the "bulletin" and "move up" rules, and have concluded that the Claimant, in face of Rule 5(e) had no absolute contract demand to move to the Temporary Vacancy under Rule 6. There was no Temporary Vacancy subject to the move-up provisions.

Claim 1 must be denied.

Claim No. 2 also must be dismissed. It is based on speculation and conjecture. There is no showing that Mr. Spence would have been the successful bidder if the bulletin had been allowed to stand and run its normal course.

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