

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when, commencing December 19, 1966, it failed to fill the vacancy occurring on the supervisory agent position at Ottumwa, Iowa in accordance with Memorandum "D" thereof, and instead permitted the work to be performed by an employee of another craft until May 22, 1967.

2. Carrier shall, as a result, compensate the senior idle telegrapher eight hours' pay for each date position was not filled, commencing April 5, 1967 until May 22, 1967.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties effective August 1, 1947, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Claim was timely presented, progressed, including conference with highest officer designated by the Carrier to receive appeals, and remained declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

The dispute arose when the Supervisory Agent position at Ottumwa, Iowa became vacant as a result of the Carrier's transferring the incumbent to a supervisory position at another location on December 19, 1966. The Agreement between the parties provides that Carrier will fill vacancies occurring on such positions by selection of an employee holding seniority under the Telegraphers' Agreement. The Supervisory Agent position at Ottumwa was vacant from December 19, 1966 until May 22, 1967, during which time the work of the position was performed by a Chief Clerk at Ottumwa. On or about May 22, 1967, the duties of the Supervisory Agent position were assigned to the first shift telegrapher at Ottumwa in addition to his other duties.

The Employees contend Carrier was in violation of the Agreement in failing to fill the vacancy from December 19, 1966 until May 22, 1967, and instead used an employee from another craft to perform the work of the Supervisory Agent position.

3. The position of Supervisory Agent at Ottumwa, Iowa, was listed as a Group 1-B Supervisory Agency under Memorandum "D" of the Agreement during the time period covered by this claim.

4. The position of Supervisory Agent at Ottumwa, Iowa, became vacant December 19, 1966, as a result of the incumbent accepting another appointment.

5. This position remained unoccupied until May 22, 1967, when Carrier appointed Mr. R. L. Stanton to fill the position.

6. Through letter dated June 5, 1967 (14 days after the Carrier filled the position by appointment) District Chairman Edris presented Carrier with a claim for 8 hours, pro rata rate, beginning April 5, 1967 and daily thereafter until position filled, account Supervisory Agency at Ottumwa, Iowa blanked. Claim made for senior telegrapher idle on rest day on each respective date, citing Rule 1 and Memorandum "D."

OPINION OF BOARD: The position of Supervisory Agent at Ottumwa, Iowa, became vacant on December 19, 1966, and was filled on May 22, 1967, by appointment of an employee covered by the Telegraphers' Agreement. On June 5, 1967, the Telegraphers' Organization filed claim alleging that the vacancy was filled prior to May 22, 1967, by an employee outside the agreement contrary to the provisions of Memorandum "D."

Carrier denies that the position was filled prior to May 22, 1967, and the Employees have not submitted any evidence to refute the Carrier's defense.

It is well settled that in meeting its burden of proof a petitioner must submit evidence of probative value to support its allegations. Mere assertion is not proof. Accordingly the claim will be dismissed for failure of proof.

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 claim will be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

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