

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19667
Docket Number TE-19492

Robert M. O'Brien, Referee

(**Brotherhood** of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
((formerly **Transportation-Communication** Division. **BRAC**)

PARTIES TO DISPUTE: (

(Duluth, **Missabe** and Iron Range Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the **Transportation-Communication** Division, **BRAC**, on the Duluth, **Missabe** & Iron Range Railway Company, TC-5826:

Claim on behalf of Mr. **D. W. Carlson**, Telegrapher and **Input** Technician, for the difference in **compensation** of eighty-four (84) cents per day beginning on June 19, 1970 and continuing as long as Carrier employes a junior employee to the Temporary Vacancy of first trick CD, Iron Junction, Minnesota in this instant case, account violation of Article 18(b) and Article 16(c) of the January 1, 1953 Agreement.

OPINION OF BOARD: On June 4, 1970 the first trick position, Input Technician, at Carrier's Chief Dispatcher's Office was advertised as a temporary vacancy. Claimant filed an application for the position but the position was awarded to Mr. J. C. Beebe, an employee **junior** to claimant.

Claim herein was filed, the Organization alleging violations of Article 16(c) and 18(b) of the **Agreement**. It contends Article 16(c) was violated when Mr. J. C. Beebe failed to file a copy of his application with the Organization's General Chairman, and that 18(b) was violated as Article 18(b) requires that a temporary vacancy of sixty days or more will be filled by the senior qualified **employee** making application. Claimant, the Organization maintains, **was** the senior applicant, the vacancy was temporary, and it is **uncontroverted** that he was qualified having served on the relief position that relieved the first trick at the "CD" office.

Carrier counters by stating, inter **alia**, that the Organization's General Chairman waived the requirements of Article 16(c) when it failed to object to Mr. Beebe's failure to submit a copy of his bid when it first became aware that Carrier had selected Mr. Beebe to fill the position. Furthermore, it contends that Article 10(f) applied herein and not Article 18(b) since 10(f) specifically excepts the position of First Trick input technician, Dispatcher's **Office** from the general **provisions** of 18(b), and that 10(f) was fully complied with.

We are of the opinion that Article 16(c) is clear and unambiguous and required that a copy of Mr. Beebe's bid be filed with the General Chairman and although 16(c) does not prescribe any time limit for doing so, it certainly should be filed before the vacancy was filled. However, we agree with Carrier's contention that the **General** Chairman waived any right to object to noncompliance with

Article 16(c). On June 12, Mr. Signorelli, Carrier's Manager of Labor Relations, telephoned Mr. Feit, the then General Chairman of the Organization's T-C Division. At that time, the General Chairman did not mention that he had not received a copy of Beebe's bid. If he had any objection to this failure to comply with Article 16(c) he should have objected then rather than waiting until after Beebe had filled the vacancy and commenced working thereon. It was too late then to correct this oversight on Beebe's part while it would not have been on the 12th.

We further find that Article 10(f) specifically applies to the vacancy in dispute herein and that said Article excepts the position of First Trick Dispatcher from the **more** general seniority provisions of the Agreement. Article 10(f) clearly provides that applicants for vacancies in the position of First Trick Telegrapher are to be considered on the basis of seniority and qualifications with qualifications to be the prime consideration. It further stipulates that selection and assignment are to be made by the management after consultation with the General Chairman. Such was done by the Carrier and the Carrier selected the applicant who, in its judgment, was the most qualified. It is axiomatic that it is Carrier's prerogative to determine the fitness and ability of an employee **for** a position and that such determination will **not** be disturbed unless it is shown that Carrier acted in an arbitrary or capricious manner. Such was not the case here. Nor does Article 10(f) make a distinction between permanent and temporary vacancies and we are without power to supply same. Thus, we conclude that Article 10(f) applied to the temporary vacancy herein and that Carrier fully complied therewith.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March 1973.