

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Referee, Judge Paul Samuel

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI PACIFIC LINES**

DISPUTE.—"Claim of employees that C. W. Donaho, the senior qualified applicant for the position of agent at Robstown, Texas, be assigned to the position and compensated for the difference in the amount he would have earned from December 9, 1933."

FINDINGS.—The Missouri Pacific Lines and C. W. Donaho are respectively the Carrier and Employee and the Disputants involved in this case. The dispute, as well as the parties involved, fall within the meaning of the amended Railway Labor Act approved June 21, 1934, and this Third Division of the Adjustment Board has jurisdiction of the subject matter.

Said dispute was handled in the usual manner up to and including the chief officer of the Carrier designated to handle such dispute as required by Section Three, first (i) of the amended Railway Labor Act, and failed of adjustment in that manner.

An agreement dated March 1, 1930, entitled "Telegraphers' Agreement" was in effect and existing between the parties at the time the dispute arose.

Petitioner filed with this Third Division of the Adjustment Board an ex parte submission to support an affirmative award, and the Respondents made formal answer to support a negative award. Oral hearing was had before this Division beginning on February 26, 1935, due notice having been given to the disputing parties who each entered appearance and presented written and oral argument.

After frequent discussions a vote was taken on April 11, 1935, and the vote being deadlocked, Paul Samuel was selected by said Board as Referee, and the matter now comes on for hearing, and after argument and a full discussion, this Division finds the following facts:

The position of agent at Robstown, Texas (a star agency), having become vacant during the latter part of October 1933, was temporarily filled by the assignment of C. W. Donaho, who at that time and for ten years prior had been assigned as first trick telegrapher at that station. The vacancy was bulletined for applicants among the employees on the Telegraphers' seniority rosters on October 30, 1933, in accordance with the rules of the Telegraphers' Agreement, among which applicants were C. W. Donaho, with seniority dating with the railroad as of September 9, 1921, and G. M. Haney, with seniority dating from June 17, 1922. Donaho continued to perform the duties of the agency temporarily until December 9, 1933, at which time G. M. Haney was assigned to the position by the Carrier.

Donaho claims that under the Telegraphers' Agreement dated March 1, 1930, that he was entitled to the assigned position, and also claims compensation for the difference in the amount he would have earned from December 9, 1933, to the present date.

The Carrier claims that it had the right to appoint G. M. Haney under Rule 34 (b) which reads as follows: "Applications will be considered according to ability and where qualifications are equal, seniority will prevail"; That Agent Haney was better qualified to fill the position than Donaho, and that the appointment was justified under the existing agreement.

C. W. Donaho asserts and maintains that he is as well qualified to fill the position as G. M. Haney, and because of his seniority rights should have received the assignment.

There is evidence in the record that Haney possibly had more experience than Donaho in the particular kind of work as is conducted in the Robstown office. However, there is no evidence to show that Donaho is incompetent. The Referee is of the opinion that while the Carrier acted in good faith in the appointment

of Haney, yet he is of the further opinion that under the particular circumstances Donaho should be given an opportunity to demonstrate his qualifications and ability. This opinion is now concurred in by a majority of the members of this Division.

AWARD

This Division, therefore, finds that Donaho should be given an opportunity to demonstrate his ability to handle the work at the Robstown Agency, but since this Division is not convinced that Donaho can handle the work in a satisfactory manner, it is, therefore, ordered that Donaho should be assigned to the position as Agent at Robstown, Texas, displacing Agent G. M. Haney, thus permitting Donaho to demonstrate his ability and qualifications, and unless the General Manager of the Missouri Pacific Lines shall on or before June 1, 1936, file with this Division a statement in writing (a copy of which shall be served upon Donaho and also the General Chairman of the Order of Railroad Telegraphers) setting forth definite reasons why Donaho is not qualified or is not a satisfactory Agent, then said Donaho shall be entitled to the permanent assignment as Agent at Robstown, Texas; that this Third Division of the National Railroad Adjustment Board shall be the final arbiter of the questions as to qualifications of said Donaho, and this Division reserves jurisdiction of this case until June 1, 1936, with the right to hear further evidence in support of any reason why Agent Donaho shall or shall not be disqualified, but this Award shall not prejudice the right of the Missouri Pacific Lines to deal with said Donaho under Rule Two of the Telegraphers' Agreement effective March 1, 1930, with reference to discipline.

It is the further Award of this Division that since the Carrier and its officers have apparently acted in good faith in this case as to the appointment of Agent Haney, that Donaho is not entitled to the difference in the amount he would have earned between December 9, 1933, down to and including the date on which Donaho assumes his work as Agent at Robstown, Texas.

This Award shall be in effect as of July 1, 1935.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 14th day of June 1935.