

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE.—

"Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company (Pacific Lines), that Extra Telegrapher H. E. Sumner be paid twelve days' time lost at Redlands, Cal., Second Street Agency, account a junior employe used there in relief service a portion of September and October 1933."

FINDINGS.—The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that—

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The parties have jointly certified the following Statement of Facts, and the Division so finds:

"Extra telegrapher H. E. Sumner, Los Angeles Division, seniority date September 15th, 1922, was available for service on September 21st, 1933.

"Extra telegrapher W. S. Allen, seniority date August 1st, 1923, was used to relieve Agent, Redlands, Second Street Agency, Los Angeles Division, September 21, 1933, to October 23, 1933."

The regular agent at Second Street Agency, Redlands, Calif., requested leave of absence for approximately two weeks beginning September 23, 1933. Redlands (Second Street) is shown in the wage schedule of the agreement with the Telegraphers effective May 1, 1927, and supplementary addenda thereto effective August 1, 1932, as a "one star" station. Rule 44 of said agreement, reading in part as follows, applies:

RULE 44 (first paragraph)

"Positions marked with a star (*) are filled jointly by the Traffic and Operating Departments. These positions will be bulletined when vacancies occur, and telegraphers will have the right to make application for same, and their applications will be considered and given preference; all things being equal, fitness and ability, together with seniority, to govern."

The Employees take the position that Rule 44 governs only the filling of permanent vacancies. They urge in support of this position that the rules of the agreement do not require that temporary vacancies be bulletined and since rule 44 deals with the filling of these positions by bulletin, it contemplates only permanent vacancies. They further assert that temporary vacancies in "one Star" positions have been filled, both prior and subsequent to the occasion giving rise to this dispute, in accordance with the terms of Rule 21 (g) reading as follows:

RULE 21 (g)

"Senior extra telegraphers, when available and competent, will be used in preference to junior extra telegraphers. Senior extra telegraphers,

not working, will be allowed to displace either THE junior extra telegrapher on the division, or THE junior extra telegrapher in general, relay, or dispatchers' offices at any time."

In substantiation they cite that under similar circumstances, at approximately the same time of the year, in 1934 and 1935, telegrapher Blair, the senior competent extra telegrapher then available, was used to relieve the agent at Redlands (Second Street) when telegrapher Allen, whose use as such relief is the subject of the dispute in this case, was unemployed and available. They also assert that Sumner, the present claimant, was fully competent to handle the position at Redlands (Second Street); that he had had more experience in agency work and in contact with shippers than Allen; that solicitation is not an important part of the duties of the agent at Redlands because the telegraph duties prevent any appreciable time being spent out of the office. They further assert that the request that Allen be used for the agent's relief came from a passenger traffic official, and that freight officials did not join in the request, and also that the passenger business of the respondent at Redlands is of small proportion as compared to its freight business.

The Carrier takes the position that rule 44 governs, and whether filling a permanent vacancy or affording temporary relief, the traffic department has an equal voice with the operating department in selecting the incumbents of positions covered by it. But it points out further that rule 19 (b), reading as follows:

RULE 19 (B)

"The Company, through the proper official, will determine the fitness of telegraphers to fill all positions in this agreement.

"Any telegrapher feeling dissatisfied on account of such decision will have the right of appeal to his superintendent and if still dissatisfied with decision may make written appeal of his case direct or through the Order of Railroad Telegraphers in regular order to the General Officials of the Company."

vests in the "proper official" the determination of the fitness of applicants for positions sought, and that rule 21 (g) requires only that the senior competent man be used; that Sumner was not competent for the agency position at Redlands (Second Street), and while his capacity for handling the supervisory accounting, and routine clerical duties is admitted, nevertheless he lacked the requisite fitness to perform the contact work with freight and passenger customers. It further asserts that Allen was qualified not only to handle the routine work of the agency, but by reason of his residence of several years at Redlands and his temporary service in the Second Street Agency office on nine occasions, totaling some twenty-six months, between February 1929 and the date of the service here involved, he was well acquainted with the carrier's customers and the methods in use for the transaction of business with them.

In support of its assertion that the solicitation duties of the agent are important and extensive, the carrier submits a statement from the agent in which he says that his telegraphic duties detain him at the office only until 2:50 p. m., daily, when the regular telegrapher comes on duty, and after that hour he frequently spends the remainder of the day away from the office soliciting.

This Division finds that the issues in this case are—

(a) Does rule 44 contemplate that its terms shall apply alike to temporary relief and permanent vacancies in positions coming under it?

(b) Was Sumner competent to handle the Redlands (Second Street) agency?

As to (a), we do not find in the language of the rule any distinction with respect to the term for which an appointment under it is to be made.

As to (b), it is shown claimant Sumner had extensive experience at stations of comparable importance in the matter of the volume and character of business handled though possibly not subject to such sharp competition as at Redlands. His general qualifications are admitted, and it is not shown that he was less competent than Allen.

With respect to this claim it is asserted that prior to its origin the carrier had used the senior competent extra-telegrapher to relieve the agent, and the weight of evidence supports the further assertion that in each of the two succeeding years an extra-telegrapher, senior to Allen and not a resident of

Redlands, was used to relieve the agent, although Allen was unemployed and available at the time.

We decide that Sumner was competent to handle the position; that he was the senior extra-telegrapher who was competent and available and should therefore be compensated for the time he was unemployed as a consequence of Allen's use in his stead, to the extent of twelve days, as claimed.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 6th day of May 1936.