Award No. 927
Docket No. TE-900

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC

THE CHICAGO, ROCK ISLAND AND GULF RYS.

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railway, that extra telegrapher E. D. Bitting is entitled to $27.21 representing the difference between the amount he earned August 26 to September 10, 1937, inclusive, on the yard office position at El Reno, Oklahoma, and what he would have earned at Carnegie, Oklahoma, August 26 to September 16, 1937, inclusive, had not his instructions to relieve at the latter point been recalled and a man younger in service than he sent to Carnegie instead."

EMPLOYES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers and the Chicago, Rock Island and Pacific; the Chicago, Rock Island and Gulf Railway Companies have an agreement covering the wages and working conditions of the employes outlined in the scope rule thereof.

"At 1:00 P. M. August 24, 1937, the Division Superintendent at Ft. Worth, Texas, sent a telegram to extra telegrapher E. D. Bitting who is employed under the Telegraphers' Agreement and who was covering a temporary assignment at Renfrow, Oklahoma, which read:

> 'When released go to Carnegie and relieve Hayes 26th. Go there on 705 Ack. B-304.'

And at 1:05 P. M. the same date telegrapher Bitting replied to the Superintendent as follows:

> 'B-304 will go Carnegie soon as released B. 10.'

"At 8:53 A. M., August 25, 1937, telegrapher Bitting received the following wire from Superintendent Bogue:

> 'Account Puckett too light for third trick El Reno yard want Bitting go there and protect 12:01 A. M. August 27, want Puckett go Carnegie and relieve Hayes. Ack. B-304.'

"Telegrapher Bitting being enroute to Carnegie left the train at El Reno and carried out the Superintendent's instructions protecting El Reno yard job sixteen days and telegrapher Puckett was sent to Carnegie where he remained twenty-two days, which caused Telegrapher Bitting to suffer a monetary loss of $27.21."

CARRIER'S STATEMENT OF FACTS: "On August 23, 1937, extra operator L. L. Puckett, with seniority date of January 1, 1928, was sent

"E. D. Bitting's seniority as an operator is July 14, 1927; L. L. Puckett's seniority as an operator is January 1, 1928. As there was a vacancy for a telegraph operator at El Reno, effective 12:01 A. M., August 26, 1937, and Mr. Bitting being the senior extra telegrapher unemployed, he was permitted to take the vacancy at El Reno created by the incompetency and removal of Puckett. The agent at Carnegie was relieved of his assignment on August 26, 1937, in order that he could go to Wichita, and Mr. Puckett, after being relieved by Bitting at El Reno, being the senior extra telegrapher then unassigned, so far as our records indicate, started at Carnegie at 8:30 A. M., August 26, 1937. Therefore Bitting was assigned to the El Reno position in line with the provisions of Article 19-(b), quoted above. He was senior as an extra operator to Puckett, and it was proper that Bitting be assigned to the El Reno position. If we had used some other junior telegrapher on the El Reno vacancy no doubt the telegraphers would have filed a claim in behalf of Mr. Bitting because we had used a junior man.

"We cannot attempt to guarantee the wages of a senior extra telegrapher as compared with a junior extra man who might have secured an assignment that pays more compensation than the position first vacant and to which the senior man is entitled on basis of seniority.

"Telegrapher Bitting, having been released at Renfrow on August 24, 1937, was the senior unemployed or unassigned extra telegrapher available for the position at El Reno which became vacant by the removal of telegrapher Puckett.

"El Reno, Oklahoma, is an important terminal, the telegraphing including train order work, is heavy and had Puckett been able to handle the work he would have been permitted to remain on the job, but as he was not able to properly perform the work he was removed in order to avoid delays to trains. Our Train Dispatchers contend that Mr. Puckett is not qualified to handle major stations or yard telegrapher positions such as El Reno, Chickasha or Ft. Worth.

"Article 19-(b) was followed by the management in this particular case by assigning Bitting, the senior unassigned extra operator to the position at El Reno, and claim of the employes should be denied."

OPINION OF BOARD: This case turns on the meaning of the words "extra men will be assigned **in turn** according to seniority," contained in Article 19-(b) of the schedule. The point is as to whether "in turn" means in turn as to the time when the vacancy is to be filled or as to the time when knowledge of an impending vacancy first arises. The claim depends on the latter interpretation. In other words, if the management learns of a vacancy to arise five days hence and learns tomorrow of another vacancy to arise three days hence, the contention is that it must assign the senior man to the vacancy it first learned of, even though it is not to be occupied until a day after the other one. This is directly contrary to a settlement on the property in the so-called Townsend case, which was based on the directly opposite contention; that is, that the senior man must be given the vacancy first occurring. We are disposed to accept that interpretation as reasonable. The mere circumstance connected with this case; i.e., that the original assignment was canceled in order to substitute claimant for another man, said to be unqualified for the vacancy to which claimant was assigned, does not alter the proper application of the rules.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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

No violation of the rules is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1939.