Award No. 1279
Docket No. TE-1324

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Pennsylvania Railroad, that the Carrier violated Part 1 of its Agreement with its Agents by arbitrarily displacing H. J. Ash, as Agent at Columbia City, Ind., July 7, 1938, and appointing R. L. Hutton to the position, and that the following resultant displacements were likewise improper; W. E. Guenther, Crestline, Ohio, by H. J. Ash; L. L. Sinninger, Denver, Ind., by W. E. Guenther and R. H. Johnson, Butler, Ind., by L. L. Sinninger; the further claim that H. J. Ash, W. E. Guenther, L. L. Sinninger and R. H. Johnson be restored to their former respective assignments and that these and any other employes adversely affected be reimbursed for any wage loss or expenses incurred by them as a result of said arbitrary changes."

EMPLOYES' STATEMENT OF FACTS: "The following shows the service record of R. L. Hutton:

1- 3-1900	Logansport Division		—Telegraph Operator.
1-12-1904	"	"	—Clerk, North Judson, Ind.
8-16-1904	"	"	—Telegraph Operator.
6-27-1905	"	"	—Extra Agent.
8-13-1907	"	"	—Agent, Bunker Hill, Ind.
3-26-1913	"	"	—Ticket Agent, Marion, Ind.
4- 1-1929	Fort Wayne Division		—Ticket Agent, Fort Wayne, Ind.
7- 7-1938	"	"	—Freight Agent and Ticket Agent, Columbia City, Ind.

"As shown above, R. L. Hutton was promoted and transferred from the Logansport Division to the Fort Wayne Division on April 1, 1929, as Ticket Agent, at Fort Wayne, Ind. This position was not included in the Schedule of Regulations governing Agents and Assistant Agents as agreed to between The Order of Railroad Telegraphers and the Pennsylvania Railroad Company on May 1, 1938, when Agents and Assistant Agents were placed under an Agreement. Therefore, Regulation 2-A-4, Part 1 of the Agreement governed the promotion and transfer of Mr. Hutton.

"On July 5, 1938, by consolidation of the positions of Freight Agent and Ticket Agent at Fort Wayne, Ind., J. C. Shollenberger, Freight Agent, was given jurisdiction by the Carrier over Ticket Agency, Fort Wayne, Ind. The position of Freight Agent, Fort Wayne, Ind., is also, not included in the Schedule of Regulations in effect between the parties to this dispute, governing Agents and Assistant Agents, but is recognized as an Official or Supervisory position.

of the Carrier designated to handle such disputes' in accordance with Section 3 (i), of the Railway Labor Act. It is respectfully requested, therefore, that only those individuals specifically named in the subject matter of the claim and F. J. Banter should be regarded as Claimants in this matter and that as to any other individuals adversely affected by the action complained of the claim should on that account be dismissed.

"III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

"The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of 'grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions.' The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

"CONCLUSION

"In the light of the foregoing it is respectfully submitted that the Carrier's action in appointing R. L. Hutton to the Agent position at Columbia City, Ind. did not constitute a violation of the applicable Agreement, and that consequently neither H. J. Ash, W. E. Guenther, L. L. Sinninger, R. H. Johnson nor R. J. Banter, who were displaced, are entitled to be restored to their former positions or to be compensated for any losses suffered or expenses incurred by virtue of their displacements.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: On July 5, 1938 by consolidation of the positions of Freight Agent and Ticket Agent at Fort Wayne, Ind. (which positions are not included in the Schedule of Regulations in effect between the parties to this dispute governing agents and assistant agents, but are recognized as official or supervisory positions), J. C. Shollenberger, Freight Agent, was given jurisdiction over the Ticket Agency at Fort Wayne, displacing R. L. Hutton, who, effective July 7, 1938, was permitted to displace H. J. Ash, at that time regularly assigned to agency at Columbia City, Indiana, which position is covered by the schedule agreement in effect between the parties to this dispute. Ash in turn was permitted to displace the regular assigned agent at Crestline, Ohio, who in turn was permitted to displace the regular assigned agent at Denver, Indiana, who in turn displaced regular assigned agent at Butler, Indiana, which agent not having sufficient seniority and being the junior agent on the roster, could not select an agency position and reverted to the clerical department.

It is the contention of the Committee that the action of the Carrier in permitting Hutton to displace H. J. Ash from his regular assigned position of agent at Columbia City on July 7, 1938, following Hutton's displacement at Ft. Wayne, was in violation of the schedule agreement; that in accord with provisions of Part 1 of that agreement, upon being displaced at Fort Wayne, Hutton should have reverted to the Logansport Division where he had accumulated seniority under Regulation 2-A-4 of the agreement.

Under Regulation 2-A-4, Hutton did not accumulate any seniority on the Ft. Wayne Division while working at Ft. Wayne.

The carrier contends that in accord with provisions of the following "Exception" to the Preamble:

> "It is recognized that the supervisory duties of positions, designated by an asterisk (*) in the Rate Schedule, require that, in filling such positions, consideration must be given to qualifications or eligibilities separate and apart from ability and fitness referred to in Regulation 1-A-1. It is agreed that, in filling such positions, the application of the advertising and seniority provisions of this Schedule will not apply, nor will they be construed to prohibit or restrict the Company in the appointment of Agents or Assistant Agents to such designated positions."

it had the right to appoint employes to and remove employes from the agency position at Columbia City and Crestline under the above quoted exception because both are asterisk (*) positions.

On the other hand, the employes admit that, if a vacancy occurs in an asterisk (*) position the carrier has a right to appoint an employe who in its judgment the management considers is qualified to hold the position, but, having filled the position, it cannot thereafter remove such employe.

The Board does not agree with the employes' construction of the "Exception." If that is what was meant, it should have included such an expression, as for example—"when such vacancy occurs." There is no such expression or a similar expression used. The words—"filling such positions"—do not convey the thought of filling such positions only when a vacancy occurs.

Nor is there anything in the agreement requiring that the employe placed in an asterisk (*) position should come from the same seniority district in which the asterisk (*) position is located, as contended by the employes.

Employes contend that this is so when the "Exception" to the preamble is considered in connection with Paragraph (c) of Regulation 1-B-1, which provides:

> "(c) When new positions or permanent vacancies occur in positions designated by an asterisk (*), notice will be posted for the information of the agents, or assistant agents in the seniority district."

With this the Board does not agree. Paragraph (c) of Regulation 1-B-1 is solely for the benefit of any employe who may wish to apply to the Management for a vacancy in an asterisk (*) position. There is nothing in this regulation even suggesting that the Management must select an employe in the same seniority district.

It follows that there has been no violation of the agreement.

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 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

That there is no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.