

Award No. 1789
Docket No. TE-1777

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Railway Company that the four (4) years and five (5) months Telegrapher C. D. Liles occupied a so-called Resident Agency position be not deducted from his pass rights.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute, copies of which are on file with the National Railroad Adjustment Board.

Mr. C. D. Liles established and retains a seniority date of June 28, 1931 on the Western Division of the Western Lines. He has prior service on another seniority district since July 24, 1929.

Subsequent to October 1, 1930 some 75 or 80 agent-telegrapher positions on the Santa Fe System Lines, were arbitrarily removed from the Telegraphers' Agreement by the carrier and so-called "resident agents" established, some of which, viz., Abbeyville, Bellefont, Dundee, Shaffer, Dillwyn, Frizzel, Plevna, Zenith, Heizer, et al, were located on said Western Division.

Because of the scarcity of work on the extra board, Mr. Liles on or about January 20, 1932 (the date Bellefont was arbitrarily changed from agent-telegrapher to resident-agent) accepted the resident agent at Bellefont.

Award No. 255 of the National Railroad Adjustment Board, Third Division, dated May 7, 1936, and settlement thereof, eliminated those resident agencies, reclassified thereto, subsequent to October 1, 1930. Final settlement of Award was made in Memorandum of Agreement dated October 28, 1936.

Mr. Liles has been in continuous service on the Western Division since June 28, 1931; however, he did occupy a resident agency position for four years and five months subsequent to that date.

POSITION OF EMPLOYES: Article XXII (a) of the Telegraphers' Agreement reads:

"Employees covered by this schedule and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in service."

December 10, 1940 Mr. Liles made inquiry of his superintendent regarding a 10 year annual pass which was due him in accordance with current pass rules. In reply to that inquiry Superintendent Baisinger, December 13, 1940, replied:

to the Board, and as the record is evidence that the Employees have not so proceeded, it is the position of the Carrier that the dispute has not been handled as required by the agreement of the parties and by Section 3—First (i) of the Act, and on that account is not one which the Board may receive and hold hearing upon.

OPINION OF BOARD: Claimants assert that Carrier violated Article 22 (a) of the agreement, which provides: "Employees covered by this schedule and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in the service." Obviously this rule does not place any obligation upon the Carrier to grant free transportation to any one; all it requires is that those covered by Telegraphers' schedule will be given the same consideration in this respect as other employees in the service. The burden rests upon one asserting a claim under this rule to establish that he has not received the same consideration as others in the service, and claimant has not only failed but made no attempt to meet this burden. This Board has no authority to make rules relating to the granting of free transportation which would be the effect of a sustaining award under the facts presented.

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 employee involved in this dispute are respectively carrier and employee 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 record discloses 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 24th day of April, 1942.