

Award No. 2371

Docket No. TE-2185

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, 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 on Pennsylvania Railroad that, Train Dispatcher L. W. Griskey, upon his position as dispatcher in the Erie, Pa., office being abolished on November 17, 1941, was improperly allowed by the Carrier to return to the telegraph department without first exercising his displacement rights in the dispatching force, and improperly allowed to displace on the third trick operator position in the Erie Relay Office, thereby preventing train dispatcher J. C. Frick, whose dispatching position was abolished at the same time, from displacing on the third trick operator position in the Erie Relay Office with resultant loss in earnings; and that L. W. Griskey shall be removed from the third trick operator position in the Erie Relay Office on which he was allowed to improperly displace, and those employees who were thereby affected shall be assigned to such positions as the exercise of their seniority entitles them and be compensated for any wage loss suffered.

EMPLOYEES' STATEMENT OF FACTS: L. W. Griskey, B. J. Kane, D. E. James, C. L. Price, and J. C. Frick rank on the roster of the Train Dispatchers, Renovo Division, 3, 4, 5, 6, and 7, respectively. In the period between seasons of lake navigation only three dispatchers are employed, and the regular tricks have been held by H. A. Coyle and T. H. Dougherty, with rank on the train dispatchers' roster as Nos. 1 and 2, and D. E. James with rank as No. 5.

In the past season of heavy traffic, three additional dispatchers were established; Messrs. Griskey, Kane and Price filling these positions in seniority order, and J. C. Frick worked as relief dispatcher. The two dispatching districts were combined under one dispatcher on Sundays.

The four individuals, Griskey, Kane, Price, and Frick, hold seniority in the Telegraph Department and previous to being promoted to regular train dispatchers, Griskey held first trick position as printer operator in "A" office, rate \$.71 per hour and worked as relief dispatcher three days per week, which was not considered a permanent and regular position, and J. C. Frick held the third trick telegrapher position in "A" office at \$.8825 per hour.

Prior to 1930, there had been seven (7) dispatcher positions including relief dispatcher, with regular assigned positions held by T. H. Dougherty and L. W. Griskey.

At the time of the dismemberment of the former Allegheny Division in 1930, the Renovo Division took over operation of the Low Grade Branch of the Allegheny Division which represented approximately one-third of the augmented mileage of the Renovo Division. The Renovo Division had at that time

employees to exercise their seniority, Frick and such other Telegraph Department employees who were affected are entitled to be compensated for any wage loss suffered.

The Carrier has shown, however, that the return of Griskey to the Telegraph Department and the Carrier's action in permitting him to displace J. C. Frick from the third trick position in "A" office, Erie, Pa., was proper and did not in any way violate the Telegraphers' Agreement, which is the only Agreement applicable to the instant claim. Since the displacement of Frick was proper it is obvious that he and such other Telegraph Department employees who were affected by his exercise of seniority are not entitled to be paid.

IV. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required to Give Effect to The Said Telegraphers' Agreement, Which is The Agreement Between The Parties Governing the Rules, Rates of Pay and Working Conditions of the Class of Employees of Which the Claimants Are Members, and to Decide The Present Dispute in Accordance Therewith.

The Railway Labor Act, in Section 3, First, subsection (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 to decide the question now before it only in accordance with the applicable schedule entered into by the parties to this dispute and governing the rules, rates of pay and working conditions of the class of employees of which the Claimants are members. The Board has no power to make an agreement between the parties; it cannot apply, in determining a dispute between the Carrier and an employee or group of employees, the provisions of an agreement to which the employee or group of employees is not a party. The Board can determine a dispute only upon the basis of the Agreement to which the Carrier and the Claimants before the Board are parties.

In the instant case the Claimants are relying upon the provisions of an agreement, the Dispatchers' Agreement, to which they are not parties. It is obvious therefore, that there is no basis upon which the Claimants may make any claims based upon provisions of the Dispatchers' Agreement. To grant the claim of the employees in this case would require the Board to disregard the applicable Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto which are not contained in the applicable Agreement and which have never been agreed upon by the parties to this dispute. The Carrier respectfully submits that the Board has no jurisdiction or authority to take any such action.

CONCLUSION

In light of the foregoing, it is respectfully submitted that the Carrier's action in permitting L. W. Griskey to displace J. C. Frick from the position of Operator at "A" office, Erie, Pa., did not constitute a violation of the Telegraphers' Agreement, the only agreement applicable to this dispute, and that, consequently, J. C. Frick is not entitled to be restored to his former position, nor is he, nor any of the unnamed claimants, entitled to be compensated for any wage losses suffered by virtue of their displacement.

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: The position held by L. W. Griskey as train dispatcher was abolished on November 17, 1941. Mr. Griskey held rights as a telegrapher and when the train dispatcher position was abolished he exercised his rights as a telegrapher. In this dispute the telegraphers contend that

Griskey had the right under the Dispatchers' Agreement to displace one James as a dispatcher, that the Carrier denied this right to Griskey and thereby caused him to exercise his rights as a telegrapher to the detriment of certain telegraphers, especially Mr. Frick.

Regulation 3-D-2 of the Telegraphers' Agreement, became effective April 12, 1938, and is as follows:

"An employe covered by Part 2 of this Schedule accepting regular assignment in another branch of the service, in which he accumulates seniority, thereby forfeits seniority under Part 2 of this Schedule, except:

"Employes covered by Part 2 of this Schedule now filling, or hereafter promoted to, positions designated as subordinate officials by I. C. C. Order, who are now or may hereafter be covered by Regulations in which they accumulate seniority, shall retain and accumulate seniority under Part 2 of this Schedule, and when relieved from such position, may return and exercise their full seniority."

Ex Parte 72, Order of the Inter State Commerce Commission, designates Train Dispatchers as subordinate officials, and, as a dispatcher, Mr. Griskey accumulated seniority in that class. We are, therefore, of the opinion that Regulation 3-D-2 is applicable to the present controversy. Under Regulation 3-D-2, Mr. Griskey upon being relieved from his dispatcher's position was privileged to return and exercise his seniority as a telegrapher. This he did, but it is contended that Mr. Griskey was deprived by the Carrier of exercising his right under the Dispatchers' Agreement to displace Mr. James. The Carrier contends, for reasons set forth in the record, that Mr. Griskey had no right to replace Mr. James, however, be this as it may, the rights under the Dispatchers' Agreement should be determined by the Dispatchers and the Carrier. The rights of the present claimant arise only under the Telegraphers' Agreement, which clearly gave Mr. Griskey the right to exercise his seniority as a telegrapher after being relieved as a dispatcher. The dispatchers are not a party to this proceeding, and we think it clear that this Division should not attempt to determine rights under the Dispatchers' Agreement in a proceeding to which the dispatchers are not a party.

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

That no violation of the Telegraphers' Agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of November, 1943.