

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Telegrapher William Quinn be compensated under the rules of the Telegraphers' Agreement in the amount of \$28.00, April 2nd to 6th, inclusive, 1939, account not used to perform service at Klamath Falls to which his seniority status entitled him.

EMPLOYEES' STATEMENT OF FACTS: Mr. E. M. Thomas, regularly assigned to a position as teletype clerk, Klamath Falls, Sacramento Division, requested leave for the purpose of going to San Francisco to take examination for Wire Chief. No extra teletype clerks were available on the Sacramento Division. A qualified extra Morse telegrapher-teletype clerk with established seniority rights, Claimant Quinn, was available. He was not used. The Carrier did use a Morse telegrapher-teletype clerk, H. H. Hannah, with seniority rights on the Salt Lake Division, to perform the relief work at Klamath Falls. The qualifications of both the Claimant, Quinn and the man used, Hannah, were identical, the only difference in their status being that Claimant Quinn held seniority rights on the Sacramento Division where the work was performed, while the man used, Hannah, held seniority rights on the Salt Lake Division.

POSITION OF EMPLOYEES: An agreement covering rules and rates of pay is in effect between the parties to the dispute and is on file with this Board.

The claim is filed under Rules 17 (e) and 21 (g), which we now quote:

"RULE 17

Seniority

(e) Seniority rights will be confined to railroad divisions and will not be interchanged between divisions except as provided for in Rule 25."

"RULE 21

Reduction of Forces and Displacement Rights

(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."

justified in using Telegrapher Hannah. Conclusive evidence that the petitioner's position is without merit is found in the admission by the petitioner's general chairman in conference that the carrier could have hired a new employe (qualified as a teletype clerk) and used him to relieve Thomas when it was determined that a teletype clerk carried on the Sacramento Division teletype clerks' seniority roster was not available. This admission is tantamount to an admission that the claimant had no agreement right to be used to relieve Teletype Clerk Thomas on April 3, 4 and 5, 1939.

The petitioner relies upon Rules 17 (e) and 21 (g) of the current agreement (see Exhibits "A" and "C") which are as follows:

"RULE 17.

SENIORITY

"(e) Seniority rights will be confined to railroad divisions and will not be interchanged between divisions except as provided for in Rule 25."

"RULE 21.

**REDUCTION OF FORCES AND
DISPLACEMENT RIGHTS**

"(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."

Neither of the above-quoted agreement provisions is applicable to the instant case. The using of Telegrapher Hannah at Klamath Falls did not extend his telegrapher seniority rights beyond the Salt Lake Division, nor did such action constitute an interchange of seniority between the Salt Lake and Sacramento Divisions (see Award 394 of this Division). Hannah was used because a teletype clerk from Sacramento Division teletype clerks' seniority roster was not available and he (Hannah) was available at Klamath Falls and qualified as a teletype clerk. Rule 21 (g) quoted above applies only to work as a telegrapher and does not in any way apply to work as a teletype clerk.

The claimant was not deprived of any seniority rights when he was not used at Klamath Falls on April 3, 4 and 5, 1939. His seniority rights did not entitle him to be used and, in using Telegrapher Hannah, the carrier was in no way violating any provision of the current agreement.

CONCLUSION

Carrier submits that it has conclusively established that the alleged claim in the instant case is entirely without merit and should be denied.

OPINION OF BOARD: The controlling facts are not in dispute. Following request of March 28, 1939, Teletype Clerk Thomas, regularly assigned to the Klamath Falls telegraph office (Sacramento Division Seniority District), was granted relief and laid off from his position from April 3rd to 5th, inclusive. Telegrapher Hannah (with Salt Lake Division seniority rights), a Morse telegrapher, who was also qualified as a teletype clerk (puncher) and who was present and available at Klamath Falls, was used to fill the vacancy. Claimant Telegrapher Quinn (with Sacramento Division seniority rights), who claims he was available on the Division, contends he should have been used on the vacancy, by reason of the fact he had seniority rights on the Division while Hannah, who was used, only had seniority rights on the Salt Lake Division, and consequently presents claim for time lost through not having received the assignment.

A careful and painstaking perusal and study of the different rules to be considered and applied in this case reveals confusion and ambiguity. We are, therefore, confronted at the outset with what should be an applicable interpretation of rules in the light of contexts and circumstances. "When ambiguity exists, the decision must be drawn from the context and from such reasonable and fair inferences as can be made therefrom." "Consideration of what must have been in the minds of the parties" must be given, and a result reached "which appears fair and equitable in all the circumstances." "In all cases an authority which is called upon to apply the language of an agreement to a specific case must study the language, the context, any circumstances which would throw light on the intent of the parties, and, if then the issue is still in doubt, the interpreting authority must exercise judgment as to what is fair and equitable." Award 318, Referee Hotchkiss.

A review of the applicable rules helpful to a determination of the issue leads us to the following:

Rule 17, Seniority—

"(e) Seniority rights will be confined to railroad divisions and will not be interchanged between divisions except as provided for in Rule 25." (Rule 25 is not applicable here.)

Rule 21, Reduction of Forces and Displacement Rights—

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

"Memorandum of Agreement," effective February 15, 1930—

"Sec. 2 Teletype machines used in telegraph offices, shall be operated by an employe coming within the scope of Rule 1 of Telegraphers' Agreement, effective September 1, 1927. Such employe may be either a Morse telegrapher or a puncher, if qualified to efficiently operate transmitting side of the machine, subject to conditions hereinafter provided."

"Sec. 7. New positions established and/or vacancies occurring on the transmitting side of Teletype machines, to which telegraphers or punchers are eligible, shall be bulletined to Telegraphers, as per Rules 19 (c) and 20 (1), and to punchers, except that new positions or vacancies in combined service designated as Telegrapher-Teletype Clerk, shall be bulletined to Morse telegraphers only, as per Rules 19 (c) and 20 (1)."

Rule 17 (d), Memorandum of Agreement—

"7. A separate seniority list shall be maintained on each division for punchers. Morse telegraphers shall have no seniority rights as punchers, and punchers will have no seniority rights as Morse telegraphers." (Punchers and teletype clerks are synonymous terms and used interchangeably.)

Query: Did the Carrier violate Rules 17 (e) and 21 (g), relied upon by the Committee? The problem is a new one, for which we have no precedent; at least, none has been called to our attention and we have not discovered any. Consideration of all the rules above quoted will help solve the problem.

Agreement that both claimant and Hannah were Morse telegraphers, qualified as teletype clerks, and that Claimant had seniority rights on the Sacramento Division, while Hannah had seniority rights on the Salt Lake Division only, facilitates the presentation of the case and avoids having to discuss their respective status and qualifications in these respects.

Qualifications being equal, it would seem at first glance that Claimant, on his own Division, should have some priority rights over other employes of other Divisions whether we designate them as seniority, superior or prior rights. Seniority necessarily means superiority and/or priority.

Rule 17 (d), Memorandum of Agreement, is relied upon by the Carrier as a defense in this case, while Rules 17 (e) and 21 (g) are relied upon by the employees as a basis for the claim.

All of the rules referred to above apply to employees on the Division. Claimant was a senior extra telegrapher on his Division, while Hannah had no standing on it. The Carrier contends the above Rule 21 (g) does not apply in this case because Claimant was not an extra teletype-clerk under Rule 17 (d), Memorandum of Agreement, the position which caused the temporary vacancy.

Without conceding this might be so, what are we going to say about Section 7, Memorandum of Agreement, of February 15, 1930, which says:

"New positions established and/or vacancies occurring on the transmitting side of teletype machines, to which telegraphers or punchers are eligible shall be bulletined, etc."

It is urged by the Carrier that this means "permanent vacancies" only, while the employees contend that the word "permanent" not being found anywhere in the rules, when reference is made to filling vacancies, the Carrier's position cannot be sustained—and there may be merit to the employees' contention (a point we do not have to decide here), hence more ambiguity. The only grounds upon which the Carrier's contention can rest is that the rules provide for bulletining new positions or permanent vacancies only, and that there is no provision specifically requiring temporary vacancies to be bulletined, which is conceded. But there is nothing in the rules that says the Carrier cannot bulletin temporary vacancies, and certainly if the Carrier had bulletined this temporary vacancy, Claimant, as against Hannah, would have been the only one who could have had the right to bid.

And what will we say of Section 2 of this same Memorandum of Agreement, where it is provided that:

"Teletype machines used in telegraph offices shall be operated by an employe coming within the scope of Rule 1 of the Telegraphers' Agreement, effective September 1, 1927. Such employe may be either a Morse telegrapher or a puncher, if qualified to efficiently operate transmitting side of the machine, subject to conditions hereinafter provided."

Doesn't that contemplate use of telegraphers on the division when extra teletype-clerks are not available?

Then again, proceeding to consideration of Section 7 discussed above, if the rule contemplates that new positions and/or vacancies shall be bulletined to telegraphers, is it not fair and reasonable to conclude that this rule contemplates also assignment of temporary vacancy work to extra telegraphers on the division when no extra teletype-clerks are available? The two groups and classifications of these employees are so intertwined, interwoven and interrelated that they, beyond the fact perhaps that they have no seniority rights over one another, are, we would say, almost inseparable. It would seem an anomaly to say that a qualified extra telegrapher on his own division is entitled to bid on a regular position but is not entitled to be assigned temporary work thereon as a matter of right, in preference to one not having any rights on the division. If he is entitled to obtain the greater position, why is he not entitled to obtain the lesser one? Is not the lesser included in the greater?

And let us not lose sight of the fact that these rules apply to divisions; that they are promulgated and agreed upon for the purpose of permitting employees to obtain seniority rights and protect their assignments thereon. All through these rules the definite intent and purport are to protect sen-

iority rights and when we do not have junior rights to contend with, as in this case, then there is nothing left but seniority to be considered.

True, there can be no claim made here that the assignment and use of Hannah as a telegrapher of a division where he had seniority rights, on this division where he had no seniority rights and no attempt was made to exercise seniority rights thereon, constituted an extension or interchange of seniority rights. Award 394 settled that proposition. But the Opinion there, thru Referee Sharfman, definitely says that it is only when the stranger to the division is used to fill a temporary vacancy, because no qualified extra unassigned telegrapher on the seniority list of the division is available at the time the vacancy develops, that the use of the employe of a foreign division is permissible. And the Opinion further says: "It is of fundamental importance that the seniority rules of collective agreements be observed carefully and in good faith." We would add, observed scrupulously, for seniority rights constitute the most valuable asset an employe has for his protection in the assignment of work that can be made available to him and to which he is entitled.

Viewed in this light, we are constrained to rule that where an extra telegrapher is available on the division where temporary relief work he is competent and qualified to perform is to be assigned to someone, the available employe of the division has superior and/or prior rights to one of another division and is entitled to the assignment as against the employe of the other division.

Availability is not in issue. The Carrier had five days to notify the Claimant who was at Sacramento. Although we have not been informed of the distance between Sacramento and Klamath Falls, we assume Claimant had plenty of time to displace himself and report at the station in order to protect it, had he been notified when Carrier knew the relief work was required. On this same proposition see Award 2392.

Of further significance is that Carrier from September 20, 1939, to April 1, 1942, advertised eighteen teletype-clerk positions, the advertisements being addressed to telegraphers and punchers; agents and telegraphers; agents, telegraphers and towermen; telegraphers; and positions were assigned to successful telegrapher and extra telegrapher bidders. This proves the applicable rule, Memorandum of Agreement, Section 7, that telegraphers are entitled to bid for teletype-clerk positions, presumably where there are no extra telegrapher-clerks available, and that Morse telegraphers are next in line. If that is so when we deal with regular positions, we are strongly of the opinion that, where there is a temporary vacancy in a teletype-clerk position, Morse telegraphers on that division are the first ones entitled to have the work assigned to them. This seems to be a natural sequence and a logical conclusion to reach. We, therefore, do conclude that the only reasonable and fair interpretation to be placed on the rules is that when vacancies occur in teletype-clerk positions, be they permanent or temporary, and there are no extra teletype-clerks available, the next in line to whom the work is to be made available are telegraphers on the division.

Rule 20 (i)—Memorandum of Agreement, and also Mediation Agreement G. C. 781, cited by the Carrier, are not applicable, as they relate to another class of employes, and G. C. 781, specifically, to five offices only, which do not include Klamath Falls.

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 employe involved in this dispute are respectively carrier and employe 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 Carrier violated Rules 17 (e) and 21(g) as interpreted in this Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1943.