

Award No. 2612
Docket No. TE-2572

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, 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 The Pennsylvania Railroad, that,

(a) a violation of Part 1 of the Agreement governing station agents and assistant agents occurred by the appointment of an employe not carried on any agents' roster to the position of agent at Mt. Vernon, Ohio;

(b) that this appointment be withdrawn and another be made in conformity with the agreement; and

(c) that all employes covered by said agreement adversely affected by this violation be compensated for all monetary losses resultantly incurred.

EMPLOYEES' STATEMENT OF FACTS: Effective December 16, 1942, a permanent vacancy occurred in the position of Freight and Passenger Agent at Mt. Vernon, Ohio, on the Cleveland Division, designated by an asterisk (*) in the Rate Schedule. On December 21, 1942, the following notice was issued in accordance with the provisions of Regulation 1-B-1 (c), a copy of which notice was sent to all stations on the Cleveland Division coming within the Scope of Part 1 of the Telegraphers' Agreement, effective May 1, 1938:

"For your information, a vacancy exists in the position of Freight and Passenger Agent, Mt. Vernon, Ohio, rate \$276.30 per month."

Pending permanent filling of this vacancy, P. B. Kelly, the Relief Agent of the Cleveland Division, was used thereon, and following the issuance of the notice referred to above he conferred with the Supervising Agent stating he wished to be considered for the position. In a subsequent conversation Mr. Kelly advised the Supervising Agent that after further consideration he did not desire to be considered for the position.

Effective February 1, 1943, T. E. Haefler, who prior to that time was Chief Clerk to the Agent at Akron, Ohio, and who did not have any previous Agent's service or seniority rights as an Agent, was appointed to the Agent position at Mt. Vernon, Ohio.

No applications for consideration was received from any Agent or Assistant Agent on the Cleveland Division in response to the published notice of existing vacancy referred to, nor were any Agent or Assistant Agent on this or any other Division canvassed for the position in question.

POSITION OF EMPLOYEES: An Agreement bearing date of May 1, 1938 as to Rules and Rates of Pay, is in effect between the parties to this dispute, designated as Part 1 of the Telegraphers' Agreement.

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: Effective December 16, 1942, the position of Freight and Passenger Agent at Mt. Vernon, Ohio, Cleveland Division, became vacant. An information notice of the existing vacancy was sent to all stations on the Division December 21. Meanwhile, Kelly, a Relief Agent with seniority on the Agents' roster of the Division, was designated to fill the position temporarily. While so serving, Kelly made verbal application for a regular appointment, but this was subsequently withdrawn. No other application was received and, effective February 1, 1943, one Haefler, Chief Clerk to the Agent at Akron, on the Cleveland Division, but not listed on the Agents' or Assistant Agents' roster of any division, was given the position.

The claim is that the appointment of Haefler be ordered withdrawn; that the carrier be required to give the position to a person on some Agents' or Assistant Agents' roster; and that all employees adversely affected by the appointment of Haefler be compensated for their monetary losses. The petitioner contends that while the carrier was privileged to fill the position from any Agents' or Assistant Agents' roster, without regard to bulletining or seniority rules, it was, nevertheless, prohibited from appointing a person not covered by Part 1 of the Regulations, effective May 1, 1938.

There is an express Exception in said Regulations to the effect that in filling positions designated by an asterisk (*) therein, the advertising and seniority provisions thereof shall 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." (Our emphasis.) The position of Agent at Mt. Vernon is designated with an asterisk (*) in said Regulations. In Awards 1279 and 1428 this Board definitely held that said Exceptions relieved the carrier from the obligation of filling a vacancy in an asterisk (*) position from its district roster. This conclusion was predicated, in each instance, upon the fact that the general advertising and seniority provisions had no application to such positions.

The petitioner calls attention to Docket No. TE-1527 which involved a claim like this, namely, that the carrier had filled an asterisk (*) position by the appointment of an employee not under the Agreement. It is asserted that pending a hearing of that claim by this Board, the parties held a conference at which it was agreed that the position would be vacated and filled from among the Agents or Assistant Agents carried on an Agents' roster, but that the carrier should not be confined to the seniority district wherein the vacancy occurred; that this was accordingly done; and that the case was thereupon withdrawn from the consideration of this Board. It further appears, however, that in entering into said agreement, the carrier made the following express reservation: "It is understood that the settlement in this case shall not constitute a precedent." The public has an interest in the amicable adjustment of disputes by the parties and it is, and ought to be, the policy of governmental agencies to encourage such disposition of controversies. For that reason this Board is always reluctant to regard such settlements as establishing binding precedents with respect to future differences. In Award 1395 it was appropriately said: "If the parties may not compromise such a claim without subjecting themselves to the danger of later having their action construed as an admission against them, a long and objectionable step will have been taken to discourage amicable adjustments on the property." In view of the prior holdings of this Board and the further fact that this carrier expressly indicated that its action in settling Docket TE-1527 was not to be understood as establishing a precedent, we are constrained to hold that the settlement of that case has no force here.

It seems to us that the same considerations that prompted this Board to hold in Awards 1279 and 1428 that the carrier was not required to fill a vacancy in an asterisk (*) position from the immediate seniority district, likewise compel us to conclude that it was not obligated to fill such a position with someone covered by the Agreement. The only provisions protecting the right of any employe, group of employes or the employes as a whole as to any particular position or class of positions that we have been able to find in this contract are those relating to bulletining and seniority. In other words, bulletining and seniority are the effective weapons whereby the organization exercises control over assignments to positions; and in this case these weapons were expressly waived.

The problem with which we are here dealing is peculiarly a matter of contract between the organization and the carrier. We do not find the terms of the contract indefinite, uncertain or ambiguous; on the contrary, these are clear and positive. It follows that any change of policy must be brought about by negotiation. It is not within our jurisdiction to make contracts for the parties.

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 the carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1944