

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
TEXAS AND PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Texas and Pacific Railway:

(a) That the Carrier violated the terms of the Telegraphers' Agreement when it refused to assign G. E. Allison, the senior applicant, to the position of agent-operator at Wickett, Texas, bulletined for bids on May 1, 1941, and instead assigned K. D. Hestes, a student telegrapher who held no seniority as a telegrapher and had no rights under provisions of the telegraphers' agreement.

(b) That G. E. Allison, who is now in the Armed Service be allowed pay in the amount of the difference between what he earned prior to entering the Armed Service and what he would have earned, including wages and commissions, had he been promptly and properly assigned to the position.

(c) That, if and when Allison is released from the Armed Service he desires to return to service with the carrier, (provided he is physically fit and in accordance with schedule rules and the law governing furloughed employes entering the Armed Service) he shall have the privilege of returning to the agent-operator position at Wickett, Texas.

JOINT STATEMENT OF FACTS:

"An agreement is in effect between the parties, effective date May 1, 1939.

"The position of agent-operator at Wickett, Texas, rate of pay 72¢ per hour (later increased to 82¢ per hour), is covered by said agreement. A vacancy on this position occurred and was bulletined on May 1, 1941. Mr. G. E. Allison was the senior applicant but was denied the position.

"Mr. K. D. Hestes, who held no seniority at the time this vacancy was bulletined, was awarded and permanently assigned to the position.

"Article 2 (a) and (c) of the agreement reads: 'Promotion shall be based on seniority and qualifications; qualifications being sufficient, seniority will prevail;' and 'when an employe is transferred or promoted and after a fair trial is found incapable, he will take his place on the extra list retaining his seniority rights.'"

POSITION OF EMPLOYES: As per the agreed upon facts, the position of agent-operator at Wickett, Texas, became vacant and was bulletined for bids on May 1, 1941, in accordance with the rules of the telegraphers' agree-

instances express shipments had been delivered without removal of bill from packages which left the station without record of such shipments, and that considerable time and effort was required to overcome the condition which resulted from Allison's tenure at the station. (This is Allison's only experience as agent.)

Hestes, present agent at Wickett, was also mentioned in our conversation yesterday. As a matter of record, I would like to repeat that I know him to be a first class man. His father, who is now agent at Loraine, started training him in station work long before he was grown with the result that his knowledge of freight rates as well as general station work exceeds that of the average station agent at one-man stations. In fact, he did all the station work at Loraine for quite a long time, under the supervision of his father, and had become an excellent agent before he asked for employment."

(Signed) R. L. Phillips
Traveling Auditor."

Which was concurred in by our Auditor Mr. Latimer, as per his letter to Assistant Vice President James of November 12, 1941, reading:

"Dallas, Texas, November 12, 1941
PF-10491

Mr. B. C. James:

Herewith letter from Traveling Auditor Phillips, dated November 11th, setting forth his views as to the incompetency of G. E. Allison and the competency of K. D. Hestes, present agent, to handle Wickett station.

Regarding remarks in fifth paragraph of Mr. Phillips' letter, would advise that when J. P. Roberts returned to Trent the transfer of agency from G. E. Allison to Mr. Roberts was made by agents on May 28th and verification was made by Traveling Auditor Phillips on July 3rd, Mr. Roberts, the regular agent, having straightened out records before verification of the transfer was made by Traveling Auditor.

Concur in Mr. Phillips' view that Mr. Allison is not competent to handle Wickett station. Would further point out that he had no railroad experience prior to November 11, 1940, and has only served as agent at Trent, a small station, from May 19th to 28th at which time, according to the regular agent, his work was not satisfactory.

Your files are returned herewith.

(Signed) F. R. Latimer,
Auditor."

In conclusion, the carrier would refer to the following Awards by your Board, denying cases similar principle involved:

Awards 1824, 1479, 1171, 1147, 1009—with particular reference to the opinion of the Board as is expressed in its Award 1009.

Would also refer to two Texas & Pacific cases, similar principle involved, denied by U. S. R. R. Labor Board in its Decisions 3419 and 3755.

OPINION OF BOARD: On May 1, 1941, a vacancy in the position of agent-operator at Wickett, Texas, was bulletined for bid. The applications of the claimant, G. E. Allison, and one McLaughlin were received. McLaughlin was killed in an auto accident, leaving Allison as the only bidder. On May 16, 1941, K. D. Hestes, a new employe who had been given seniority as of

May 10, 1941, was assigned to the position and Allison with seniority date as of December 25, 1940, was denied the position. The Organization contends that this was a violation of the agreement.

On May 24, 1941, the Carrier in response to the complaint of the Organization informed it that Allison was denied the position because of a lack of qualifications for the position. This raises the question whether Rule 2 (a) of the current agreement was violated. It provides that "Promotion shall be based on seniority and qualifications; qualifications being sufficient, seniority will prevail."

Whether an employee is qualified for a position within the meaning of the foregoing rule is a matter exclusively for the carrier to determine, and such a determination once made will be sustained unless it appears that the action of the carrier was capricious or arbitrary. Award 2350.

The record shows that Allison was on the extra list at the time the vacancy at Wickett was bulletined. The only experience that Allison had previously had was at Trent, a very small agency, where he had relieved the regular agent for a few days. The record shows that he not only did not keep the work up at this point but that he did not understand the basic duties of the position. There is evidence in the record that the Assistant Superintendent and Traveling Auditor of the Carrier, the officers in the best position to know, considered Allison not qualified for the position. The reasons they give lend support to their conclusions. We think this record indicates that the decision of the Carrier was supported by evidence and did not constitute arbitrary or capricious action.

It is urged by the Organization that its position is supported by the fact that the position was filled, after it was denied to Allison, by persons with no previous experience with any carrier. Assuming the correctness of this statement, it does not raise an issue properly to be decided here. The only question before the Board is whether Allison was qualified,—if he was, the position should have been given to him; if he was not qualified, no basis for a claim exists. We having found that the decision is supported by substantial evidence and that it was not the result of arbitrary or capricious action by the Carrier, this Division cannot properly substitute its judgment for that of the Carrier by assigning an employee to the position which it deems qualified but which the Carrier does not.

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 employees involved in this dispute are respectively carrier and employees 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 act arbitrarily or capriciously in denying the claim of Allison to the agent-operator position at Wickett, Texas, on the ground of a want of proper qualifications, and no basis for an affirmative award therefore exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of November, 1944.